Vol. I

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1914

No. [illegible]54

L. E. WATERMAN COMPANY, APPELLANT,

vs.

MODERN PEN COMPANY.

FILED SEPTEMBER 7, 1912.

No. [illegible]72

MODERN PEN COMPANY, APPELLANT,

vs.

L. E. WATERMAN COMPANY.

FILED DECEMBER 10, 1912.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

(23,350 and 23,451)

MINNESOTA STATE LIBRARY

INDEX.

PLEADINGS, ETC.

	Page	Vol.
Subpoena	1	I
Complaint (Original)	16	I
Demurrer	1135	III
Order Overruling Demurrer	14	I
Order Allowing Amendment to Complaint	14	I
Complaint (Amended)	16	I
Answer	1139	III
Replication	28	I
Order Fixing Time to Take Proofs	29	I
Stipulation that officers before whom deposition taken competent	30	I
Opinion (Memorandum), Judge Hough on Preliminary Injunction	1108	II
Preliminary Injunction Order (Original	1111	II
Opinion—Court of Appeals	1114	II
Preliminary Injunction Order (modified	1118	II
Offer to Limit Proofs	1122	II
Opinion, Hand, D. J.	1861	III
Decree	1874	III
Petition for Appeal and Allowance	1874	III
Assignments of Error	1877	III
Bond	1881	III
Citation	1882	III
Clerk's Certificate	1884	III

Vol.

COMPLAINANT'S TESTIMONY.

I

PAGE

Allen, Charles G.,
Direct 136
Cross 137
Redirect 140

Allen, Harry H.,
Direct 383
Cross 385
Redirect 390

Ash, Louis W.,
Direct 330
Cross 333
Redirect 335

Bailey, Ralph S.,
Direct 380
Cross 381
Redirect 382

Baker, Herbert,
Direct 404
Cross 408
Redirect 410

II

Barkley, Richard W.,
Direct 703
Cross 706

Barry, Kevin W.,
Direct 564
Cross 567

Bechtol, Charles W.,
Direct 501
Cross 503
Redirect 504

	PAGE	Vol.
		I
Bennett, Arthur Edward,		
Direct	458	
Cross	459	
Bonenfant, George J.,		
Direct	451	
Cross	453	
Bradford, Donald D.,		
Direct	420	
Cross	422	
Brink, Henry R.,		
Direct	423	
Cross	425	
Redirect	427	
		II
Brooks, George F. T.,		
Direct	518	
Cross	521	
Brown, Hubert H.,		
Direct	487	
Cross	488	
Redirect	490	
		I
Brown, William Foster,		
Direct	443	
Cross	445	
Redirect	447	
Buhrman, Walter A.,		
Direct	397	
Cross	400	
Redirect	402	

	PAGE	Vol.
		I
Burgoyne, Sidney J.,		
Direct	373	
Cross	374	
Redirect	376	
		II
Burkhardt, Alfred,		
Direct	516	
Cross	516	
Redirect	517	
		I
Chaffee, Arthur N.,		
Direct	344	
Cross	346	
Redirect	347	
		II
Chaplin, William J.,		
Direct	526	
Cross	532	
Redirect	543	
(Recalled) Direct	573	
Cross	573	
Redirect	575	
		I
Cooper, John Albert,		
Direct	355	
Cross	356	
Redirect	357	
Cormier, Victor C.,		
Direct	178	
Cross	180	
Cummings, Arthur,		
Direct	430	
Cross	432	

	PAGE	Vol.
		I
Ferris, William I.,		
Direct	32	
Cross	39	
Redirect	50	
(Recalled) Direct	72	
Cross	76	
Redirect	85	
		II
Direct	752	
Cross	753	
Redirect	760	
		I
Fleharty, Rolland E.,		
Direct	390	
Cross	392	
		II
Frazer, William G.,		
Direct	773	
Cross	777	
Rediret	786	
		I
Hebert, Joseph Louis,		
Direct	433	
Cross	436	
Redirect	438	
Hollander, Harry M.,		
Direct	126	
Cross	131	
Redirect	133	
		II
Irvine, Frederick Brice,		
Direct	735	
Cross	737	

	PAGE	Vol.
		I
Joel, Ephraim M.,		
Direct	357	
Cross	359	
Redirect	360	
Jousse, Paul Theophile Felix,		
Direct	440	
Cross	442	
Katner, Edward J.,		
Direct	183	
Cross	198	
Redirect	233	
Kernan, William Hill,		
Direct	243	
Cross	266	
Redirect	275	
		II
Kinsey, A. H.,		
Direct	510	
Cross	511	
Redirect	512	
Kneeland, George P.,		
Direct	513	
Cross	514	
Redirect	514	
Lancaster, Warren N.,		
Direct	608	
Cross	616	
Redirect	642	
		I
Liddell, Robert C.,		
Direct	158	
Cross	163	
Redirect	173	

	PAGE	Vol.
		II
Lutzer, Ernest,		
Direct	731	
Cross	733	
		I
Mason, Jr., H. Lee,		
Direct	353	
Cross	354	
		II
Mullineux Matthew,		
Direct	589	
Cross	592	
Redirect	598	
Nunn, J. Edward,		
Direct	581	
Cross	585	
Redirect	587	
Parcels, Harry M.,		
Direct	603	
Cross	605	
Poulson, Harper W.,		
Direct	559	
Cross	561	
Redirect	563	
Raymond, Walter B.,		
Direct	650	
Cross	669	
(Recalled) Direct	650	
Cross	740	
Redirect	744	
		I
Rogers, Henry W.,		
Direct	342	

	PAGE	Vol.
		I
Saadi, John,		
Direct	114	
Cross	118	
Redirect	121	
		II
Seiler, John,		
Direct	765	
Cross	766	
Redirect	769	
		I
Sell, Frank N.,		
Direct	413	
Cross	415	
Redirect	418	
Sinclair, Norman A.,		
Direct	468	
Cross	474	
Redirect	474	
Southerland, James,		
Direct	464	
Cross	465	
Staunton, Oliver B.,		
Direct	491	
Cross	493	
Redirect	496	
		II
Steinmuller, Theodore A.,		
Direct	1124	
Cross	1126	
Redirect	1129	

	PAGE	Vol.
		I
Stephens, Edward M.,		
Direct	278	
Cross	279	
Redirect	281	
		II
Stevens, Frederick W.,		
Direct	791	
Cross	798	
Redirect	813	
		I
Stott, Charles G.,		
Direct	395	
Cross	396	
Tandy, Van Brunt,		
Direct	147	
Cross	149	
Redirect	154	
		II
Trory, Charles E.,		
Direct	505	
Cross	507	
Redirect	509	
		I
Waldo, Richard H.,		
Direct	286	
Cross	290	
Warwick, Charles E.,		
Direct	481	
Cross	483	
Redirect	484	
Waterman, Arthur A.,		
Direct	93	
Cross	110	
Redirect	112	

	PAGE	Vol.
		II
Watson, Samuel S.,		
Direct	745	
Direct	746	
Wheeler, Howard L.,		
Direct	556	
Cross	557	
Redirect	558	
		I
Whiting, Du Monte A.,		
Direct	362	
Cross	363	
Redirect	364	
Whiting, Willis P.,		
Direct	368	
Cross	369	
Wilson, William J. C.,		
Direct	485	
Cross	486	
		II
Wood, Florence W.,		
Direct	523	
Cross	525	
(Recalled) Direct	570	
Cross	571	
		I
Wood, Walter,		
Direct	476	
Cross	477	
Redirect	478	

COMPLAINANT'S EXHIBITS.

	Offered page	Printed page	Vol.
Advertisements:			
11.—Wolfson Bros.	332	337	I
23.—Warwick Bros. & Rutter	473	848	II
24.—Warwick Bros. & Rutter	473	849	
45.—Barnes & Co., Ltd.	198	866	
100.—A. A. Waterman Circular of Mar. 1/99	547	578	
101.—A. A. Waterman Circular of Apr. 20/99	548	579	
102.—Rhodes Lockwood Circular	548	580	
139.—Aloe	1359	954	
141.—Lazarus	1369	955	
Letters:			
			I
12.—Wolfson and Modern Pen Co.	334	338	
17.—Waterman to Hollander	127	134	
20.—Saadi to Geyer, Dec. 7-09	62	63	
25.—Woods & Co. to Waterman	476	479	
26.—Woods & Co. to Waterman	477	479	
31.—Wotherspoon to Waterman Co., Oct. 13-10 and Nov. 7-10	189	851	II
32.—Arnold to Waterman Co., Aug. 29-10	189	852	
33.—Chalmers to Waterman Co., Jan. 2-11	189	853	
34.—Gibson & Huyck to Waterman Co., Sept. 20-10, Nov. 11-10 and Nov. 24-10	190	853	
35.—Post Card, McKinnon to Waterman Co., Jan. 6-11	190	855	

Vol. II

	Offered page	Printed page
36.—Cormier to Waterman Co., Oct. 29-07	190	855
37.—Newton to Waterman Co., April 25-10	191	856
39.—Post Cards, Neudorf to Waterman Co., Mch. 6-11, Feb. 21-11	192	857
41.—Smyth to Waterman, Dec. 28-09	192	858
42.—Cason to Waterman Co., Sept. 15-09 and Sept. 27-09	192	858
46.—Postmaster's Letter, Montreal to Davidson & Wainwright, April 29-09		867
47.—Gifford to Waterman, Sept. 29-09	247	868
48.—Phlegar to Waterman, Dec. 22-09 and Jany. 8-10	247	871
49.—Hall to Waterman, Sept. 29-09	248	872
50.—Brentano to Waterman, Oct. 19-09	248	874
51. Harding to Waterman, Oct. 27-07	249	874
52.—Foley to Waterman, Feb. 11-11	249	875
53.—Broadalbin Drug Co. to Waterman, Dec. 31-10	249	876
55.—Bowie to Waterman, Jan. 11-11	250	878
56.—Delatush to Waterman, Jan. 16-11	250	879
58.—York to Waterman, Jan. 28-10	251	880

Vol. II

	Offered page	Printed page
59.—Waterman to Ewing, July 27-10	251	880
60.—Mimms to Waterman, Mar. 8-10	251	882
61.—Steele to Waterman, Jan. 5-10	252	884
62.—Burdette to Waterman, Feb. 1-11	252	885
63.—Hoyt to Waterman	252	885
64.—Warren to Waterman, March 25-10	252	885
65.—Wisewell to Waterman, Nov. 16-09	253	887
66.—Lee to Waterman, Nov. 24-09	253	888
67.—Innes to Waterman, Oct. 26-08	254	890
68.—Hull to Waterman, Oct. 16-09	254	891
69.—Shumway to Waterman, Jan. 17-10	254	891
70.—Fincik to Waterman, Sept. 8-10	255	892
71.—Lendrum to Waterman, March 3-10	255	893
72.—Lanyon to Waterman, Jan. 28-11	255	894
73.—Burkley to Waterman, Jan. 30-10	256	895
74.—Partridge to Waterman,, Dec. 8-10	256	896
75.—Hulberg to Waterman, Oct. 13-09	256	897
76.—Gold to Waterman, Nov. 3-09	257	898

Vol. II

	Offered page	Printed page
77.—Heisler to Waterman, Jan. 10-11	257	899
78.—Scannell to Waterman, Nov. 22-09	258	900
79.—AAllen to Waterman, Nov. 2-09	258	901
80.—Newstedt to Waterman, May 27-09	258	902
81.—Kaufman to Waterman, Dec. 13-09	258	903
82.—Tailoring Co. to Waterman, Sept. 24-09	259	904
83.—Tillson to Waterman, April 11-10	259	905
84.—Mandaville to Waterman, April 25-10	259	906
85.—Gogburn to Waterman, Feb. 11-10	259	906
86.—McGrew to Waterman, Nov. 19-09	260	907
87.—Neall to Waterman,	260	908
88.—Burgess to Waterman, Dec. 6-10	260	908
89.—Klappenbach to Waterman, Jan. 19-11	261	910
90.—Dow to Waterman, Jan. 31-11	261	911
91.—Menges to Waterman, Jan. 21-11	261	911
92.—Bryan to Waterman, Jan. 16-11	262	913
93.—Brosius to Waterman, Jan. 6-11	262	913
94.—Williams to Waterman, Dec. 30-10	262	915

	Offered page	Printed page	Vol
			II
95.—Morrow to Waterman, Feb. 27-11	263	917	
96.—Williamson to Waterman, Dec. 22-10	263	918	
97.—Spencer to Waterman, April 18-10	263	919	
98.—Hartman to Waterman, April 18-10	263	920	
99.—Roberts & Son Co. to Waterman June 17-10	264	921	
99a.—Hauk to Waterman, Jan. 29-04		922	
135.—Committee letter to Frazer on organization of Modern Pen Co., June 21,05	1325	940	
136.—Bacon to Frazer, Geyer & Waterman	1327	942	
142.—Watson & Raymond to Chapman, April 18-07 and April 20-07	1375	751	
1 of Jan. 6, 1911. Plaintiff's			I
letter to Herbert Baker	406	412	
Miscellaneous Manuscripts:			II
6.—Package of envelopes	36	956	
9.—Notice to discontinue use A. A. Waterman & Co.	38	841	
18.—Saadi decree	129	842	
			I
19.—Bill of A. A. Waterman & Co. to Saadi, Dec. 4/09	131	146	
27.—Walter Woods & Co. and Brown Bros. invoice	477	480	

	Offered page	Printed page	Vol.
			I
28.—Modern Pen Co. and Warwick Bros. & Rutter Agreement	497	498	
43.—Four papers of W. R. & S. A. Campbell	193	860	II
44.—Two papers, Bennett Exchange Slip	196	861	
44a.—Package of Envelopes	194	862	
112.—Muir & Co. Receipt	652	699	
114.—Thayer Receipt	656	699	
116.—Jensen, Herzer & Jeck Receipt	661	699	
120.—Adam, Melville & Anderson Sales Slip	664	700	
121.—Three Saadi Invoices	669	700	
126.—Lutzer Subpoena	735	923	
127.—Frazer and Geyer Affidavit	1304	923	
128.—Frazer and Geyer Complaint	1304	927	
129.—Geyer Affidavit	1318	931	
130.—Justice Giegerich order appointing receiver for A. A. Waterman & Co.	1308	933	
131.—Judgment of June 4 of Frazer & Geyer Co. v. Frazer, Geyer & Waterman	1311	936	
132.—Judgment in Wm. E. Chapman Inc. v. Frazer & Geyer Co., Frazer, Geyer and Waterman	1313	937	
133.—Transfer to Frazer & Geyer Co. by A. A. Waterman & Co.	1315	938	

Vol. II

	Offered page	Printed page
134.—Sheriff's transfer to Quackbush	1317	939
137.—Chapman Affidavit	1329	944
138.—Henderson Affidavit	1329	951
Patents:		
22.—Stone No. 744,642	70	710
122.—Vale No. 290,820	709	714
123.—Leutner No. 387,686	709	723
124.—Warriner No. 713,927	709	727
Photographs, etc.:		
21.—Medal facsimiles	74	846
29.—Photograph of Carey's Window	174	850
117.—J. Basheim, Picture of Store	662	697
118.—J. Basheim, Picture of Store	663	698
1 of April 7, 1911. Photograph Standard Drug Co. Window	514	515
Physical:		
7.—Complainant's Pen	36	
8.—Complainant's Pen	37	
10.—Defendant's Pen	56	
14.—Royal Ideal Pen	115	
15.—Royal Ideal Box	116	
30.—Pen bought of Standard Drug Co.	179	

	Offered page	Printed page	Vol.
			I
54.—Broadalbin Drug Co.'s Pen	250		
57.—Delatush's pen	250		
			II
103.—Box of "Waterman" Pens	570		
104.—"Waterman" Pen (Silver)	577		
			I
106.—H. H. Allen Pen	385		
			II
107.—Molineaux Pen	590		
108.—Molineaux Box	590		
109.—Purcell Pen	608		
110.—Lancaster Gold Pen	649		
111.—Muir & Co. Pen and Box	652		
125.—Lutzer Pen	732		
			III
140.—A. A. Waterman's Safety Pen	1529		
			I
38.—Boyden Box	191		
Publications, etc.:			
13.—Good Housekeeping	286		
16.—Extracts from Good Housekeeping	288	295	
Trade Marks:			
			II
1.—"Ideal" No. 35,048	34	821	
2.—"Ideal" No. 49,817	34	825	
3.—"Waterman's Ideal Fountain Pen, N. Y.," No. 35,849	34	829	

Vol.
II

	Offered page	Printed page
4.—"Waterman's Ideal Fountain Pen, N. Y.," No. 49,478....	34	833
5.—"Waterman's" No. 59,703....	34	837

DEFENDANT'S TESTIMONY.

III

PAGE

Ayer, M. Isabel,
- Direct 1456
- Cross 1460
- Redirect 1473
- Recross 1475

Bartlett, Harry C.,
- Direct 1147
- Cross 1156
- Redirect 1183

Blatz, Max L.,
- Direct 1478
- Cross 1480
- Redirect 1495

Dooley, Josephine,
- Direct 1434
- Cross 1438
- Redirect 1451
- Recross 1454

Flewitt, Eugene,
- Direct 1186
- Cross 1188
- Redirect 1198

Vol. III

PAGE

Geyer, Hobart W.,
Direct 1246
Cross 1287
Redirect 1376
Recross 1390

Kaiser, John W.,
Direct 1535
Cross 1538
Redirect 1541
Recross 1543

Nault, James A.,
Direct 1562
Cross 1566
Redirect 1571
Recross 1572

Rightmire, Fred R.,
Direct 1208
Cross 1216
Redirect 1240

Spear, Asa A.,
Direct 1589
Cross 1592

Sweeney, Timothy,
Direct 1577
Cross 1582
Redirect 1586
Recross 1587

Williams, Ward D.,
Direct 1594
Cross 1595

Vol. III

PAGE

Redirect 1595
Recross 1597

Wilson, Louise S.,
Direct 1548
Cross 1551
Redirect 1559
Recross 1561

Van Valer, DeWitt C.,
Direct 1495
Cross 1507
Redirect 1525
Recross 1529
(Recalled) Direct 1531
Cross 1532
Redirect 1534

DEFENDANT'S EXHIBITS.

Advertisements:

	Offered page	Printed page
G.—Advertisement contained in Exhibit F	457	1616
A-64.—Advertisement in Cornell Window	1389	1765

Agreements, etc.:

A-4.—Articles of copartnership, Jan. 9/01, between Waterman, Frazer and Geyer	1253	1635
A-5.—Endorsement, Dec. 12/01,		

Vol. III

	Offered page	Printed page
on articles of copartnership extending forty years	1253	1639
A-6.—Agreement, Aug. 27/01, between Frazer & Geyer Co. and William G. Frazer and Hobart W. Geyer	1254	1639
A-7.—Agreement, Dec. 12/01, between Frazer & Geyer Co. and Waterman	1254	1642
A-8.—Agreement, Dec. 12/01, between Frazer & Geyer Co. and Waterman & Co.	1254	1645
A-9.—Modification, June 11/04, of articles of copartnership, Jan. 9/01	1254	1648
A-10.—Further modification, Feb. 11/05, of former articles of copartnership	1254	1650
A-11.—Agreement, Feb. 11/05, between Frazer & Geyer Co. and Waterman	1254	1659
A-12.—Temporary agreement, May 27/05, between Waterman and Chapman, relative to reorganization	1254	1666
A-13—Articles of copartnership, June 12/05, between Waterman, Chapman and Chapman. Paragraph 8 of said contract contains the assignment of the trade name of A. A. Waterman	1254	1668 1669
A-14.—Agreement, July 5/05, be-		

	Offered page	Printed page	Vol. III
tween Modern Pen Company and Waterman	1255	1673	
A-58.—Draft proposed agreement, defendant and others with Aiken-Lambert Co.	1275	1724	
A-59.—Draft proposed contract between Modern Pen Co. of West Virginia and Modern Pen Co. of New York, dated Dec. , 07	1275	1727	
Circulars, etc.:			
B of Apl. 10/11. Circular issued by plaintiff purporting to be an extract from the order of this court entered Dec. 10/10	676	1617	
A-15—Circular of new partnership signed by Waterman & Co.	1255	1678	
A-41.—Circular addressed to the reorganization committee of the Frazer & Geyer Co., Apr. 26/05	1266	1712	
A-63.—Two placards and circular	1388	1764	
Letters:			
C of Mch. 27/11. Brink to defendant	1153	1621	
D of Mch. 27/11. Defendant to Brink	1153	1621	

Vol. III

	Offered page	Printed page
E of Mch. 27/11. Defendant to Bartlett	1155	1622
G of Mch. 27/11. Bartlett to defendant	1155	1624
F of Mch. 27/11. Defendant to Bartlett	1155	1625
H of Mch. 27/11. Bartlett to defendant	1155	1627
I of Mch. 27/11. Defendant to Bartlett	1155	1628
J of Mch. 27/11. Defendant to Bartlett	1155	1629
K of Mch. 27/11. Defendant to Bartlett	1155	1630
M of Mch. 27/11. Bartlett to defendant	1156	1630
L of Mch. 27/11. Defendant to Bartlett	1156	1631
N of Mch. 27/11. Bartlett to defendant	1156	1623
A of Apl. 10/11. Ramsey to Waterman & Co.	676	1617

(Cleveland Correspondent).

A18.—Teller to Geyer, Nov. 10/09	1261	1681
A-17.—Watson & Raymond to Standard Drug Co., Nov. 11/09		1682
A-19.—Defendant to Teller, Nov. 12/09	1261	1683
A-20.—Standard Drug Company to defendant, Nov. 12/09	1261	1684

Vol. III

	Offered page	Printed page
A-21.—Defendant to Standard Drug Company, Nov. 18/09	1261	1684
A-32.—Standard Drug Company to defendant, Nov. 18/09	1264	1686
A-22.—Standard Drug Company to defendant, Nov. 19/09	1261	1687
A-23.—Teller to Geyer, Nov. 19/09	1261	1687
A-24.—Defendant to Teller, Nov. 23/09	1261	1688
A-25.—Defendant to Standard Drug Company, Nov. 23/09	1262	1688
A-33.—Bushnell to defendant, Dec. 1/09	1264	1689
A-34.—Defendant to Bushnell, Dec. 2/09	1264	1691
A-26.—Teller to Geyer, Dec. 15/09	1262	1692
A-27.—Defendant to Teller, Dec. 17/09	1262	1693
A-35.—Waterman Co. of Canada to Ryan, Jan. 13/10	1264	1708
A-36.—Plaintiff to Hammell, Feb. 1/10	1264	1709
A-37.—Dugan to Waterman & Co., June 22/10	1264	1709
A-38.—Defendant to Dugan, June 25/10	1265	1710
A-40.—Tucker to Percival & Co., Apl. 4/10	1265	1712

Vol. III

Correspondence Relating to Plaintiff's Infringement of One of Defendant's Patents.

	Offered page	Printed page
A-50.—Bacon to plaintiff, Apl. 20/09	1274	1719
A-51.—Plaintiff to Bacon, Apl. 30/08	1274	1719
A-55.—Bacon to plaintiff, May 19/08	1274	1720
A-56.—Plaintiff to Bacon, May 21/08	1275	1720
A-57.—Bacon to plaintiff, May 26/08	1275	1722

Correspondence Relative to Proposed Sale.

A-45.—Elliott to Watson, March 5/09	1273	1723
A-46.—Watson to Chapman, Mch. 7/08	1273	1723
A-47.—Chapman to Watson, Mch. 19/08	1274	1724
A-48.—Chapman to Watson, Mch. 28/08	1274	1731
A-49.—Watson & Raymond to Chapman, Mch. 30/08	1274	1732
A-52.—Chapman to Watson, May 7/08	1274	1733
A-53.—Watson to Chapman, May 8/08	1274	1733
A-54.—Chapman to Watson, May 11/08	1274	1734

	Offered page	Printed page	Vol. III
A-60.—Thirty-nine letters of commendation of defendant's pen..	1283	1735	
A-61.—Nineteen letters of denunciation of plaintiff's pens..	1283	1756	
A-62.—Weaver to Bacon, May 10/05, enclosing circular, recommending that Frazer & Geyer Co. be put into hands of a receiver	1280	1773	
A-66.—Waterman to Oriental Bank, June 14/05	1430	1776	
Remainder of Saadi correspondence		1779	
Miscellaneous Manuscripts:			
A.—(a) Defendant's offer, Dec. 12/10, that a permanent decree be entered conforming to the terms of the final order after the preliminary injunction	32	1601	
(b) Similar offer, May 17/11, made at close of the testimony	1207	1602	
B.—Decree of Sept. 3/98	45	1603	
C.—Memorandum given by Mr. Saadi on ordering penholders stamped "Royal Ideal"	119	1612	
A of Mch. 27/11. Business card of H. C. Bartlett, Jr., representing defendant	1148	1619	
B of Mch. 27/11. Order of Buhrman Brothers	1151	1620	
A-1.—Business card of Eugene Flewitt, representing defendant	1187	1632	

Vol. III

	Offered page	Printed page
A-2.—Notice of Gratz Nathan, receiver of William G. Frazer	1252	1633
A-3.—Order appointing Gratz Nathan receiver, June 7/05	1253	1634
A-16.—Statement of all pens and penholders (holders marked Royal Ideal pen) sold by defendant to John Saadi, showing profit on holders of $21.60	1258	1680
A-28.—Complaint of L. E. Waterman Company vs. Standard Drug Co.	1262	1694
A-29—Permanent injunction in L. E. Waterman Company vs. Standard Drug Co.	1262	1703
A-30.—Notice of plaintiff "To all whom it may concern" attached to copy of Exhibit A-29, Cleveland decree	1262	1706
A-31.—Certificate, Feb. 4/10, of Chapman Co., authorizing them to do business under the name of "A. A. Waterman & Co.	1263	1706
A-39.—Memorandum of different styles of A. A. Waterman & Co. pens that correspond in quality to the L. E. Waterman Company pens	1265	1711
A-42.—Account of Charles E. Trory of Crestline, Ohio, Apl. 11/11	1266	1714

Vol. III

	Offered page	Printed page
A-43.—New imprinting of the Lincoln pen	1267	1716
A-44.—Translation of the Italian complaint, L. E. Waterman Company vs. Guido Cabrini, July 2/10	1271	1717
A-65.—Minutes of special meeting of Frazer & Geyer Co., Apl. 19/05 and Apl. 26/05	1430	1766
A-67.—Card showing different processes through which the pen it put in its manufacture	1507	1778
A-68.—Six cards showing methods of manufacture	1577	1778
Physical:		
F.—Lincoln fountain pen box	457	1615
A and B of Apl. 8/11. Lancaster pen points	646 and 647	1615
A-69.—Two of plaintiff's pen points, soft iridium	1577	1778
Registrations:		
D.—Saadi's registration of label "Royal Ideal"	120	1613
E.—Saadi's registration of label "Royal Ideal"	120	1614

COMPLAINANT'S SUPPLEMENTAL PROOFS.

Vol. III

PAGE

Edgar R. Accetta,
- Direct 1788
- Cross 1790
- Redirect 1796
- Recross 1799
- Redirect 1809
- Recross 1810
- Redirect 1814
- Recross 1816
- Redirect 1820

Order permitting complainant to introduce copy of Italian Opinion in evidence..... 1825

	Offered page	Printed page
Complainant's Exhibit No. 143. Decision of the Italian Court.....	1785	1827
Complainant's Exhibit No. 144, Translation	1786	1843

ADDITION TO INDEX.

	Page
Opinion	1893
Petition of L. E. Waterman Company for rehearing	1894
Opinion on petition for rehearing	1901
Petition of the Modern Pen Company for a modification	1901
Affidavit of Hobart W. Geyer	1903
Order denying further changes	1906
Election by the L. E. Waterman Company	1907
Order denying petition for rehearing	1908
Final decree	1908
Petition for appeal by the L. E. Waterman Company	1909
Affidavit of Frank D. Waterman	1909
Assignment of errors by the L. E. Waterman Company	1910
Order granting appeal of L. E. Waterman Company	1912
Bond on appeal of L. E. Waterman Company	1912
Clerk's certificate	1915
Citation to Modern Pen Company and service	1916
Petition for appeal by the Modern Pen Company	1917
Affidavit of Hobart W. Geyer	1917
Assignment of errors by Modern Pen Company	1918
Order allowing appeal of Modern Pen Company	1919
Bond on appeal of Modern Pen Company	1920
Clerk's certificate	1921
Citation to the L. E. Waterman Company and service	1922

Subpoena.

THE PRESIDENT OF THE UNITED STATES OF AMERICA TO MODERN PEN COMPANY, GREETING:

You are hereby commanded that you personally appear before the Judges of the Circuit Court of the United States of America for the Southern District of New York in the Second Circuit in Equity, on the first Monday of May, A. D., 1910, wherever the said Court shall then be, to answer a bill of complaint exhibited against you in the said Court by L. E. Waterman Company, and do further and receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty on you of Two hundred and fifty dollars. 2

Witness, The Honorable Melville W. Fuller, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, on the 11th day of April, in the year of our Lord one thousand nine hundred and ten and of the Independence of the United States of America, the one hundred and thirty-fourth. 3

JOHN A. SHIELDS,
Clerk.

Watson & Raymond,
Solicitors for Complainant.

The defendant is required to enter appearance in the above cause, in the Clerk's office of this Court, on or before the first Monday of May, 1910, or the bill will be taken *pro confesso* against it.

J. A. S.,
Clerk.

4 *Complaint*

(Endorsed): I hereby certify that on the 11th day of April, 1910, at the City of New York in my District I served the within Subpoena in Equity upon the within-named defendant, Modern Pen Company by exhibiting to William .. Chapman, as Secretary of said Company at 17 Battery Place, New York, the within original, and at the same time leaving with him a copy thereof. William Henkel, United States Marshal, Southern District of New York. Dated, April 11, 1910. U. S. Circuit Court, Southern District of N. Y. Filed April 11, 1910. John A. Shields, Clerk.

5

Complaint (Original).

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK,

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,
against
6
MODERN PEN COMPANY,
Defendant.

To the Honorable, the Judges of the Circuit Court of the United States for the Southern District of New York:

The L. E. Waterman Company, a corporation duly incorporated, organized and now existing under the laws of the State of New York, and a citizen of said State, having its principal place of business at No. 173 Broadway, in the City of New York, County and State of New York, in the Southern District of New

York, brings this its bill of complaint against the Modern Pen Company, a corporation incorporated, organized and now existing under the laws of the State of West Virginia, and a citizen of the State of West Virginia, having its principal place of business in the City of New York, County and State of New York, in the Southern District of New York, and carrying on business at No. 22 Thames Street, in said City of New York.

And your orator thereupon complains and says:

I. That the L. E. Waterman Company, your orator, is a corporation incorporated, organized and now existing under the laws of the State of New York with its principal place of business at No. 173 Broadway, in the City, County and State of 8
New York, and is a citizen of the State of New York; that your orator is informed and believes and therefore alleges that the defendant, Modern Pen Company, is a corporation incorporated, organized and now existing under the laws of the State of West Virginia, and is a citizen of the State of West Virginia, with its principal place of business in the City of New York, County and State of New York, at No. 22 Thames Street, in the said City of New York.

II. That in the year 1883 one Lewis E. Waterman was engaged in the business of manufacturing and selling fountain pens in the said City of New York and in the year 1883 adopted as his trade-mark for fountain pens manufactured and sold by him the word "Waterman's" and the words "Waterman's Ideal 9
Fountain Pen, N. Y." and in connection with the manufacture and sale by him of fountain pens used and continued to use continuously until the year 1887 and until he was succeeded in said business by your orator, the said trade-marks in commerce among the several States of the United States and in commerce between the United States and foreign nations to denote and designate to the public the fountain pens so manufactured and sold by him.

III. That in the year 1887 your orator, the L. E. Waterman Company, was incorporated and organized as a corporation un-

der the laws of the State of New York and thereupon succeeded to the business and all rights of the said Lewis E. Waterman in and to said trade-marks "Waterman's" and "Waterman's Ideal Fountain Pen, N. Y." and all rights, interests and property of the said Lewis E. Waterman in the business of the manufacture and sale of fountain pens, as aforesaid; that your orator has continued the said business of manufacturing and selling fountain pens since the year 1887 continuously until the present time; that in connection with the said manufacture and sale of fountain pens and for the purpose of more clearly distinguishing the goods of their manufacture from those of other manufacturers,
11 your orator and its predecessor, the said Lewis E. Waterman, continuously from the year 1883 to the present time, stamped and labeled fountain pens made by them with said trade-marks "Waterman's" and "Waterman's Ideal Fountain Pen, N. Y."; and continued from the year 1883 to the present time the use of said trade-mark, stamped, labeled and affixed to the fountain pens of their manufacture for the purpose of more clearly distinguishing the goods of their manufacture from those of other manufacturers; that said trade-marks so stamped and affixed to fountain pens have been continuously used from the year 1883 to the present time by your orator and its said predecessor, the said Lewis E. Waterman, in trade and commerce among the several states of the United States and in commerce between the United States and foreign nations to denote and distinguish
12 the goods of their manufacture from those of other manufacturers.

IV. That on the 5th day of February in the year 1901, your orator duly registered in the United States Patent Office its said trade-mark "Waterman's Ideal Fountain Pen, N. Y." as a trade-mark for fountain pens under and in accordance with the United States Trade-mark Acts then in force, which certificate of registration or a duly certified copy of same is ready here in Court to be produced; that on the 6th day of February in the year 1906, your orator duly registered in the United States Patent Office its said trade-mark "Waterman's Ideal Fountain

Pens, N. Y." as a trade-mark for fountain pens under and in accordance with United States Trade-mark Acts then in force, which certificate of registration or a duly certified copy of same is ready here in Court to be produced; that on the 15th day of January in the year, 1907, your orator duly registered in the United States Patent Office its said trade-mark "Waterman's" as a trade-mark for fountain pens under and in accordance with United States Trade-mark Acts then in force, which certificate of registration or a duly certified copy of same is ready here in Court to be produced; that your orator is now the owner and entitled to the exclusive use as a trade-mark for fountain pens of said trade-marks "Waterman's" and "Waterman's Ideal Fountain Pen, N. Y."; that your orator and its predecessor in business have since the year 1883 continuously until the present time, applied and affixed to fountain pens of its manufacture and to the boxes in which said fountain pens were sold the said trade-marks "Waterman's" and "Waterman's Ideal Fountain Pen, N. Y." and has extensively used the said trade-marks in advertising and selling said pens; that your orator has invested and expended large sums of money in the manufacture and sale of its fountain pens bearing said trade-marks and improving and perfecting the same and that it has sought in many ways and by a large expenditure of money exceeding the sum of One million dollars ($1,000,000) to popularize said fountain pens and to advertise the same under said trade-marks, and your orator has expended during the last four or five years, in advertising fountain pens of its manufacture, stamped and marked with its said trade-marks and in making fountain pens of its manufacture known to the trade and public by means of said trade-marks, a sum exceeding One hundred thousand dollars ($100,000) per annum; that because of the superior quality, workmanship and material of said fountain pens of your orator's manufacture bearing said trade-marks, your orator's trade therein increased from year to year and assumed large proportions until thousands of said fountain pens bearing said trade-marks were annually sold by your orator, the same being a source of great profit to your orator and a bene-

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fit to the public; that your orator further shows unto your Honors, that the said trade-marks "Waterman's" and "Waterman's Ideal Fountain Pen, N. Y." applied and affixed to fountain pens of its manufacture, as aforesaid, came to be widely known and widely and generally recognized by dealers therein and by the public generally as indicating and distinguishing the goods of your orator's manufacture; that the said dealers and the public generally relied upon said trade-marks stamped and affixed upon said pens and upon the boxes in which they were contained as indicating that the goods so stamped and marked were of your orator's manufacture and they were thereby as-
17 sured that the goods so stamped and marked were reliable and superior in quality, material and workmanship and were in fact "Waterman's Pens" or "Waterman Fountain Pens" or "Waterman's Ideal Fountain Pens" of your orator's manufacture, and the public having become familiar with such goods, and the quality, material and workmanship thereof, called for and purchased the same by asking for the fountain pen of your orator's manufacture as "Waterman Pens," or "Waterman's Pens," or "Waterman Fountain Pens," or "Waterman's Fountain Pens," or "Waterman's Ideal Fountain Pens," or "Ideal Pens;" that the name "Waterman Company" and the name "Waterman and "Waterman's" have been for more than twenty years well known to the trade and public as indicating the plaintiff company and its fountain pens, and during all this period the name
18 "Waterman" and "Waterman's" affixed to, or used in connection with the sale of, fountain pens has denoted and indicated origin and has denoted and indicated that the plaintiff company is the maker of fountain pens bearing said name.

V. And your orator further shows unto your Honors that it is informed and believes and therefore alleges that the defendant, Modern Pen Company, was and for some time has been and still is engaged in the business of selling fountain pens at No. 22 Thames Street, New York City, in the Southern District of New York, and that said defendant has advertised, offered for sale and sold fountain pens not of plaintiff's manufacture

marked and stamped with the word "A. A. Waterman & Co.", and that the fountain pens so advertised, offered for sale and sold by the defendant, as aforesaid, bore the impression or stamp on the writing pen and on the holder of the words "A. A. Waterman & Co.," which stamp or impression was and is an imitation and simulation of your orator's name and of the stamp which your orator places on pens of its manufacture and upon the boxes in which the same are distributed and sold; that the said pens advertised, offered for sale and sold by the defendant, as aforesaid, were not made by the plaintiff and that thereby the defendant infringed plaintiff's said trade-marks and imitated and simulated plaintiff's corporate and trade name; that 20
dealers to whom defendant sells and has sold said pens have advertised, offered for sale and sold and are advertising, offering for sale and selling said pens as "Waterman Pens" and "Waterman Fountain Pens" and "Waterman's Pens" and "Waterman's Fountain Pens"; that the defendant thereby has fraudulently and is fraudulently securing to itself the profits rightfully belonging to the plaintiff, to the plaintiff's great detriment and damage; that the defendant is still continuing the business and practice of advertising, offering for sale and selling fountain pens bearing the said trade-marks and trade names of the plaintiff and simulations and colorable imitations thereof, which fountain pens are not of plaintiff's manufacture, and the defendant willfully threatens to continue said illegal and unlawful acts to the great injury and damage of plaintiff's reputation 21
and business and to the great injury and damage of plaintiff's good name and trade-marks; that the defendant in advertising, offering for sale and selling fountain pens not of plaintiff's manufacture, bearing said trade-marks and trade names of the plaintiff and simulations and colorable imitations thereof, is thereby deceiving the public and injuring the name and good will of plaintiff's business; that defendant is using said name *Waterman* for the purpose of deceiving the public and for the purpose of passing off on the public fountain pens which are not of plaintiff's manufacture as and for fountain pens of plaintiff's manufacture,

22 *Complaint*

all to the plaintiff's great injury, detriment and damage and to the great injury and damage of the good name and reputation of plaintiff's goods.

VI. And plaintiff is informed and believes and therefore alleges that there is no person by the name of *Waterman* connected with defendant's business and that such has been the fact since July 1, 1906; that the defendant advertises and represents and holds itself out as the sole selling agent of "A. A. Waterman & Co.," which is a fictitious business name used by Isaac E. Chapman and William L. Chapman, both of whom are directors and officers of the defendant company, and that
23 the defendant advertises and represents that the fountain pens advertised, offered for sale and sold by the defendant and which bear the mark or stamp "A. A. Waterman & Co." are manufactured by said "A. A. Waterman & Co."; that said fictitious business name "A. A. Waterman & Co." is used for the purpose of deceiving the public and with the intent and purpose of passing off on the public fountain pens which are not of plaintiff's manufacture as and for fountain pens of plaintiff's manufacture.

VII. That your orator further shows unto your Honors that the defendant, in advertising, offering for sale and selling fountain pens bearing the mark or stamp "A. A. Waterman & Co." has caused great confusion among the trade and public generally
24 as to the identity of origin of said fountain pens and has caused and is causing the trade and public generally to believe that the fountain pens advertised and sold by the defendant, bearing the mark or stamp "A. A. Waterman & Co.," are fountain pens of plaintiff's manufacture; that since the defendant has been advertising and selling the fountain pens stamped or marked "A. A. Waterman & Co." a large number of such fountain pens have been sent to the plaintiff for repairs or exchange by purchasers thereof in the belief that they were of plaintiff's manufacture and that numerous of such pens so sent to the plaintiff are broken or faulty in construction or will not work or are otherwise unsatisfactory; that said acts of the defendant damage the

plaintiff's business and lead the trade and purchasers of fountain pens to believe that the plaintiff is manufacturing a faulty and defective fountain pen to the great injury and damage of plaintiff's reputation and business.

VIII. That your orator further shows unto your Honors that the fountain pens which the defendant is advertising, offering for sale and selling, bearing the stamp or mark "A. A. Waterman & Co." and which are not of plaintiff's manufacture, are inferior to the "Waterman's Pens," "Waterman Fountain Pens" and "Waterman's Ideal Fountain Pens" of plaintiff's manufacture in utility, appearance, style, workmanship and material and their inferiority in these particulars taken in connection with their fraudulent substitution for the goods of plaintiff has damaged and continues to damage the reputation and business of plaintiff and the reputation and good name of plaintiff's fountain pens among the trade and public generally and plaintiff does not know the full extent of the damage thus suffered but states upon information and belief that the same exceeds, exclusive of interest and costs, the sum of Two hundred and fifty thousand dollars ($250,000).

IX. That plaintiff is informed and believes, and therefore alleges, that the defendant has notice and full knowledge of plaintiff's rights in the premises.

X. That the plaintiff further charges that the actions of the defenadnt, as aforesaid, are contrary to equity and good conscience and constitute an unlawful, fraudulent, unfair and inequitable competition in business and an invasion and infringement of the plaintiff's rights in the premises and of the plaintiff's registered trade-marks, all to plaintiff's great and irreparable loss and injury, by which plaintiff has been and still is being deprived of profits which it might and otherwise would have obtained but which have been received and enjoyed and still are being received and enjoyed by the defendant by reason of its unlawful acts, as aforesaid; and plaintiff further charges that the acts of the defendant, as aforesaid, have caused and still

28 are causing great and irreparable injury and damage to plaintiff's reputation, good name and business and great damage and injury to the reputation and good name of fountain pens of plaintiff's manufacture.

Forasmuch as your orator can have no adequate relief except in this Honorable Court and to the end, therefore, that the defendant may, if it can, show why your orator should not have the relief hereby prayed, and that defendant may be required to make full disclosure and discovery of all matters aforesaid and according to the best and utmost of his knowledge, remembrance, information and belief, and full, true and perfect answers make to the matters hereinbefore made, stated and charged
29 but not under oath, answer under oath being hereby expressly waived.

To the end, therefore, that your orator may obtain relief in the premises and forasmuch as your orator has no adequate remedy at law and can obtain no adequate relief except in this Honorable Court, it humbly prays:

That the said Modern Pen Company, its officers, servants, agents, attorneys and workmen and each and every one of them may be restrained and enjoined provisionally and perpetually by an order and injunction of this Honorable Court from:

1. Directly or indirectly making or causing to be made, selling or causing to be sold, or offering for sale, or advertising any
30 fountain pens of other manufacture than that of the plaintiff under the name of Waterman or Waterman's or Waterman Pens, or Waterman's Pens, or Waterman Fountain Pens, or Waterman's Fountain Pens, or any mark or name in imitation thereof or near resemblance thereto as might be calculated to deceive or be likely to cause confusion or mistake in the mind of the public or deceive purchasers, or which would indicate that the fountain pens so sold, represented or advertised are fountain pens of plaintiff's manufacture.

2. Infringing the plaintiff's trade-mark "Waterman's," or infringing the plaintiff's trade-mark "Waterman's Ideal Fountain Pen, N. Y." and from manufacturing or selling fountain pens

(other than fountain pens of plaintiff's manufacture) having the said trade-marks, or either of them, or any simulation or colorable imitation thereof, on such fountain pens whether on the holder or on the gold pen, or on labels, boxes, signs, letter-heads, billheads, circulars, or advertisements accompanying or used in connection with the making or selling of such fountain pens, or in any manner whatsoever.

3. Using in connection with the manufacture and sale of fountain pens (other than fountain pens of plaintiff's manufacture) the name "A. A. Waterman" or "A. A. Waterman & Co." or "A. A. Waterman & Company" or "Arthur A. Waterman & Company," or any corporate, firm or individual name containing the word Waterman, Waterman's or Watermans or any mark or name containing the word Waterman in any form, whether the same be or be not coupled with other names or initials, or with the initials "A. A." or with the initial "A" or whether the same be or be not used in collocation with the word "Pen" or "Fountain Pen" or other descriptive words. 32

That the said defendant may be decreed to deliver up any and all fountain pens, labels, signs, prints, packages, wrappers or receptacles in the possession of the defendant bearing the trade-mark of your orator or any reproduction, counterfeit, copy or colorable imitation thereof and that this Honorable Court may order the same destroyed.

That the said defendant may be decreed to render a full, true and perfect account and to pay unto your orator all the profits obtained by it by reason of its aforesaid wrongful acts and the damages thereby suffered by your orator, including the damages sustained by your orator by its loss of trade and also the damages done to the good name and good will of your orator's said business and to the repuation of its said "Waterman's Pens," "Waterman's Fountain Pens," and "Waterman's Ideal Fountain Pen, N. Y." including three times the amount of the actual damages suffered by your orator on account of the use by the defendant in connection with the sale of fountain pens of any reproduction, counterfeit, copy or colorable imitation of your orator's said trade-marks, and also the costs of this suit. 33

34 *Complaint*

That your orator may have such other and further relief as to this Honorable Court may seem meet, equitable and just.

May it please your Honors to grant unto your orator a writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this Honorable Court, commanding, enjoining and restraining the said defendant, Modern Pen Company, its officers, servants, agents, attorneys and workmen and each and every one of them, as is hereinbefore in that behalf prayed.

May it please your Honors to grant unto your orator the writ of subpoena issuing out of and under the seal of this Honorable Court directed to the said defendant, Modern Pen Company,
35 commanding it on a certain day and under a certain penalty to be and appear in this Honorable Court then and there to answer this bill and to stand to and abide such order and decree as may be made against it.

And your orator will ever pray, etc.

Dated, New York, April 5th, 1910.

L. E. WATERMAN COMPANY,
By Frank D. Waterman,
President.

Watson & Raymond,
Solicitors for Plaintiff,
No. 10 Wall Street,
New York City, New York.
Samuel S. Watson,
36 of Counsel.

State of New York,
City and County of New York, } ss.:
Southern District of New York,

Frank D. Waterman, being duly sworn, deposes and says: That he is the president of the plaintiff herein; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

37

That the said plaintiff is a corporation and the reason why this verification is not made by the plaintiff is because of that fact. That deponent's knowledge and the grounds for his information and belief are derived from his participation in the management of the business of said plaintiff as its president.

FRANK D. WATERMAN.

Sworn to before me this
5th day of April, 1910.
W. M. Bonhag,
Notary Public, No. 76,
N. Y. County.

38

U. S. Circuit Court, Southern District of New York. Filed Apr. 11, 1911, John A. Shields, Clerk.

39

40

Order Overruling Demurrer.

At a stated term of the United States Circuit Court, Southern District of New York, held at the Post Office Building, New York City, on the 28th day of June, 1910.

Present: Hon E. Henry Lacombe, Circuit Judge.

L. E. WATERMAN COMPANY,
Plaintiff,
against
MODERN PEN COMPANY,
Defendant.
} In Equity.

41

The demurrer of the Modern Pen Company, the above named defendant, to the bill of complaint having been heretofore argued and briefs submitted, and due consideration having been given the same, it is, after hearing Alexander S. Bacon, of counsel for defendant, in favor of the demurrer, and Samuel S. Watson, of counsel for the plaintiff, opposed,

Ordered and adjudged, that the said demurrer be and the same hereby is overruled, costs to abide the event, and the defendant have twenty days after the entry of this order within which to file and serve an answer to said bill of complaint.

42

E. HENRY LACOMBE,
United States Circuit Judge.

U. S. Circuit Court, Southern District of N. Y. Filed June 28, 1910. John A. Shields, Clerk.

Order Allowing Amended Complaint.

43

At a stated term of the United States Circuit Court, Southern District of New York, held at the Post Office Building, New York City, on the 16th day of July, 1910.

Present: Hon. Learned Hand, Judge.

L. E. Waterman Company,
Plaintiff,
against
Modern Pen Company,
Defendant.
} In Equity.

44

This cause coming on to be heard upon the petition of plaintiff to file an amended bill of complaint this day tendered herein, the Court now being fully advised,

Orders and adjudges, that said amended bill be and the same is now filed; and it is

Further ordered and adjudged, that the defendant have twenty (20) days after the entry of this order within which to file and serve an answer to said amended bill of complaint.

LEARNED HAND,
Judge.

45

U. S. Circuit Court, Southern District of N. Y. Filed July 16, 1910. John A. Shields, Clerk. Copy received July 16, 1910. A. S. Bacon, Deft's. Atty.

46 **Amended Complaint.**

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Complainant,
against
MODERN PEN COMPANY,
47 Defendant.

Amended Complaint.

To the Honorable, the Judges of the Circuit Court of the United States, for the Southern District of New York:

The L. E. Waterman Company, a corporation duly incorporated, organized and now existing under the laws of the State of New York, and a citizen of said State, having its principal place of business at No. 173 Broadway, in the City of New York, County and State of New York, in the Southern District of New York, files this, its amended bill of complaint against the Modern Pen Company, a corporation incorporated, organized
48 and now existing under the laws of the State of West Virginia, and a citizen of the State of West Virginia, having its principal place of business in the City of New York, County and State of New York, in the Southern District of New York, and carrying on business at No. 22 Thames Street, in said city of New York.

And your orator thereupon complains and says:

I. That the L. E. Waterman Company, your orator, is a corporation incorporated, organized and now existing under the laws of the State of New York, with its principal place of business at No. 173 Broadway, in the City, County and State of

New York, and is a citizen of the State of New York; that your orator is informed and believes and therefore alleges, that the defendant, Modern Pen Company, is a corporation incorporated, organized and now existing under the laws of the State of West Virginia, and is a citizen of the State of West Virginia, with its principal place of business in the City of New York, County and State of New York, at No. 22 Thames Street, in the said City of New York. 49

II. That in the year 1883, one Lewis E. Waterman was engaged in the business of manufacturing and selling fountain pens in the said City of New York, and in the year 1883 adopted as his trade-mark for fountain pens manufactured and sold by him, the word "Waterman's" and the words Waterman's Ideal Fountain Pen, N. Y." and the word "Ideal," and in connection with the manufacture and sale by him of fountain pens used and continued to use continuously until the year 1887, and until he was succeeded in said business by your orator, the said trade-marks in commerce among the several States of the United States, and in commerce between the United States and foreign nations, to denote and designate to the public the fountain pen so manufactured and sold by him. 50

III. That in the year 1887, your orator, the L. E. Waterman Company, was incorporated and organized as a corporation under the laws of the State of New York, and thereupon succeeded to the business and all rights of the said Lewis E. Waterman in and to said trade-marks, "Waterman's," "Waterman's Ideal Fountain Pen, N. Y." and "Ideal," and all rights, interests and property of the said Lewis E. Waterman in the business of the manufacture and sale of fountain pens, as aforesaid; that your orator has continued the said business of manufacturing and selling fountain pens since the year 1887, continuously until the present time; that in connection with the said manufacture and sale of fountain pens and for the purpose of more clearly distinguishing the goods of their manufacture from those of other manufacturers, your orator and its predecessor, the said Lewis E. Waterman, continuously from 51

52 *Amended Complaint*

the year 1883 to the present time, stamped and labeled fountain pens made by them with said trade-marks "Waterman's," "Waterman's Ideal Fountain Pen, N. Y." and "Ideal," and continued from the year 1883 to the present time the use of said trade-marks stamped, labeled and affixed to the fountain pens of their manufacture for the purpose of more clearly distinguishing the goods of their manufacture from those of other manufacturers; that said trade-marks so stamped and affixed to fountain pens have been continuously used from the year 1883 to the present time by your orator and its said predecessor, the said Lewis E. Waterman, in trade and commerce
53 among the several states of the United States and in commerce between the United States and foreign nations, to denote and distinguish the goods of their manufacture from those of other manufacturers.

IV. That on the 5th day of February, in the year 1901, your orator duly registered in the United States Patent Office its said trade-mark "Waterman's Ideal Fountain Pen, N. Y." as a trade-mark for fountain pens under and in accordance with the United States Trade-Mark Acts then in force, which certificate of registration or a duly certified copy of same is ready here in Court to be produced; that on the 6th day of February, in the year 1906, your orator duly registered in the United States Patent Office its said trade-mark "Waterman's Ideal
54 Fountain Pen, N. Y." as a trade-mark for fountain pens under and in accordance with United States Trade-mark Acts then in force, which certificate of registration or a duly certified copy of same is ready here in Court to be produced; that on the 15th day of January, in the year 1907, your orator duly registered in the United States Patent Office its said trade-mark, "Waterman's," as a trade-mark for fountain pens under and in accordance with United States Trade-mark Acts then in force, which certificate of registration or a duly certified copy of same is ready here in Court to be produced; that on the 18th day of September, in the year 1900, your orator duly registered in the United States Patent Office its said trade-mark "Ideal" as a trade-mark for fountain pens under and in accordance with the

United States Trade-mark Acts then in force, which certificate of registration or a duly certified copy of same is ready here in Court to be produced; that on the 13th day of February, 1906, your orator duly registered in the United States Patent Office its said trade-mark "Ideal" as a trade-mark for fountain pens under and in accordance with the United States Trade-mark Acts then in force, which certificate of registration or a duly certified copy of same is ready here in Court to be produced; that your orator is now the owner and entitled to the exclusive use as a trade-mark for fountain pens of said trade-marks "Waterman's," Waterman's Ideal Fountain Pen, N. Y." and "Ideal;" that your orator and its predecessors in business have 56
since the year 1883, continuously until the present time, applied and affixed to fountain pens of its manufacture and to the boxes in which said fountain pens were sold the said trade-marks, "Waterman's," "Waterman's Ideal Fountain Pen, N. Y." and "Ideal" and have extensively used the same as their trade-marks in advertising and selling said pens; that your orator has invested and expended large sums of money in the manufacture and sale of its fountain pens bearing said trade-marks and improving and perfecting the same and that it has sought in many ways and by large expenditure of money, exceeding the sum of two and one-half millions of dollars ($2,500,000), to popularize said fountain pens and to advertise the same under said trade-marks, and your orator has expended during the last four
or five years, in advertising fountain pens of its manufacture, 57
stamped and marked with its said trade-marks and in making fountain pens of its manufacture known to the trade and public under and by means of said trade-marks, a sum exceeding two hundred thousand dollars ($200,000) per annum; that because of the superior quality, workmanship and material of said fountain pens of your orator's manufacture bearing said trade-marks, your orator's trade therein increased from year to year and assumed large proportions until thousands of said fountain pens bearing said trade-marks were annually sold by your orator, the same being a source of great profit to your orator and a benefit to the public; that your orator further shows unto your Honors,

58 that the said trade-marks "Waterman's," "Waterman's Ideal Fountain Pen, N. Y." and "Ideal" applied and affixed to fountain pens of its manufacture, as aforesaid, came to be widely known and widely and generally recognized by dealers therein and by the public generally as indicating and distinguishing the goods of your orator's manufacture; that the said dealers and the public generally relied upon said trade-marks stamped and affixed upon said pens and upon the boxes in which they were contained as indicating that the goods so stamped and marked were of your orator's manufacture and they were thereby assured that the goods so stamped and marked were reliable and superior in quality, material and workmanship and were in
59 fact "Waterman's Pens" or "Waterman Fountain Pens" or "Ideal Pens" or "Waterman's Ideal Fountain Pens," of your orator's manufacture, and the public having become familiar with such goods, and the quality, material and workmanship thereof, called for and purchased the same by asking for the fountain pens of your orator's manufacture as "Waterman Pens," or "Waterman's Pens," or "Waterman Fountain Pens," or "Waterman's Fountain Pens," or "Waterman's Ideal Fountain Pens," or "Ideal Pens;" that the name "Waterman Company" and the name "Waterman" and "Waterman's" have been for more than twenty years well known to the trade and public as indicating the plaintiff company and its fountain pens, and during all this period the name "Waterman" and "Waterman's"
60 affixed to, or used in connection with the sale of, fountain pens has denoted and indicated origin and has denoted and indicated that the plaintiff company is the maker of fountain pens bearing said name.

V. And your orator further shows unto your Honors that it is informed and believes and therefore alleges that the defendant, Modern Pen Company, was and for some time has been and still is engaged in the business of selling fountain pens at No. 22 Thames Street, New York City, in the Southern District of New York, and that said defendant has advertised, offered for sale and sold fountain pens not of plaintiff's manufacture marked and stamped with the words "Waterman" and

"A. A. Waterman & Co.," and that the fountain pens so advertised, offered for sale and sold by the defendant, as aforesaid, bore the impression or stamp on the writing pen and on the holder of the words "Waterman" and "A. A. Waterman & Co.," which stamp or impression was and is an imitation and simulation of your orator's name and of the stamp which your orator places on pens of its manufacture, and upon the boxes in which the same are distributed and sold; that the said pens advertised, offered for sale and sold by the defendant, as aforesaid, were not made by the plaintiff and that thereby the defendant infringed plaintiff's said trade-marks and imitated and simulated plaintiff's corporate name and the trade-name 62
of its goods; that dealers to whom defendant sells and has sold said pens have advertised, offered for sale and sold and are advertising, offering for sale and selling said pens as "Waterman Pens" and "Waterman Fountain Pens" and "Waterman's Pens" and "Waterman's Fountain Pens" and "Ideal Pens" and "Waterman's Ideal Fountain Pens," all of which is well known to and encouraged by the defendant; that the defendant thereby has fraudulently and is fraudulently securing to itself the profits rightfully belonging to the plaintiff, to the plaintiff's great detriment and damage; that the defendant is still continuing the business and practice of advertising, offering for sale and selling fountain pens bearing the said trade-marks and trade-names of the plaintiff and simulations and colorable imitations thereof, which fountain pens are not of plaintiff's manu- 63
facture, and the defendant willfully threatens to continue said illegal and unlawful acts to the great injury and damage of plaintiff's reputation and business and to the great injury and damage of plaintiff's good will, good name and trade-marks; that the defendant, in advertising, offering for sale and selling fountain pens not of plaintiff's manufacture, bearing said trade-marks and trade-names of the plaintiff, and simulations and colorable imitations thereof, is thereby deceiving the public and injuring the name and good will of plaintiff's business; that defendant is using said name, *Waterman* and *A. A. Waterman & Co.*, for the purpose of deceiving the public and for the

64 *Amended Complaint*

purpose of passing off on the public fountain pens which are not of plaintiff's manufacture as and for fountain pens of plaintiff's manufacture, all to the plaintiff's great injury, detriment and damage and to the great injury and damage of the good name and reputation of plaintiff's goods.

VI. And plaintiff is informed and believes and therefore alleges that there is no person by the name of *Waterman* connected with defendant's business and that such has been the fact since July 1, 1906; that the defendant advertises and represents and holds itself out as the sole selling agent of "A. A. Waterman & Co.," which is a fictitious business name used by
65 Isaac E. Chapman and William L. Chapman, both of whom are directors and officers of the defendant company, and that the defendant advertises and represents that the fountain pens advertised, offered for sale and sold by the defendant and which bear the mark or stamp "A. A. Waterman & Co," are manufactured by said "A. A. Waterman & Co.;" that said fictitious business name, "A. A. Waterman & Co.," is used for the purpose of deceiving the public with the intent and purpose of passing off on the public fountain pens which are not of plaintiff's manufacture as and for fountain pens of plaintiff's manufacture, and that fountain pens manufactured, as aforesaid, and sold by the defendant, are advertised, represented, sold and passed off as fountain pens of plaintiff's manufacture; that the
66 defendant and said Isaac E. Chapman and William L. Chapman have no right, as against this plaintiff, to use the name *Waterman* in any form in connection with the manufacture or sale of fountain pens not of plaintiff's manufacture.

VII. That your orator further shows unto your Honors that the defendant, in advertising, offering for sale and selling fountain pens bearing the mark or stamp "A. A. Waterman & Co." has caused great confusion among the trade and public generally as to the identity of origin of said fountain pens and has caused and is causing the trade and public generally to believe that the fountain pens advertised and sold by the defendant, bearing the mark or stamp "A. A. Waterman & Co.," are foun-

tain pens of plaintiff's manufacture; that since the defendant has been advertising and selling the fountain pens stamped or marked "A. A. Waterman & Co." a large number of such fountain pens have been sent to the plaintiff for repairs or exchange by purchasers thereof in the belief that they were of plaintiff's manufacture and that numerous of such pens so sent to the plaintiff are broken or faulty in construction or will not work, or are otherwise unsatisfactory; that said acts of the defendant damage the plaintiff's business and lead the trade and purchasers of fountain pens to believe that the plaintiff is manufacturing a faulty and defective fountain pen, to the great injury and damage of plaintiff's reputation and business. 68

VIII. That your orator further shows unto your Honors that the fountain pens which the defendant is advertising, offering for sale and selling, bearing the stamp or mark "A. A. Waterman & Co.," and which are not of plaintiff's manufacture, are inferior to the "Waterman's Pens," "Waterman Fountain Pens" and "Ideal Pens" and "Waterman's Ideal Fountain Pens," of plaintiff's manufacture in utility, appearance, style, workmanship and material and their inferiority in these particulars taken in connection with their fraudulent substitution for the goods of plaintiff has damaged and continues to damage the reputation and business of plaintiff and the reputation and good name of plaintiff's fountain pens, among the trade and public generally, and plaintiff does not know the full extent of the damage thus suffered, but states upon information and belief, that the same exceeds, exclusive of interest and costs, the sum of Two hundred and fifty thousand dollars ($250,000). 69

IX. That plaintiff is informed and believes, and therefore alleges, that the defendant has notice and full knowledge of plaintiff's rights in the premises.

X. That the plaintiff further charges that the actions of the defendant, as aforesaid, are contrary to equity and good conscience and constitute an unlawful, fraudulent, unfair and inequitable competition in business and an invasion and infringement of the plaintiff's rights in the premises and of the plain-

70 tiff's registered trade-marks, all to plaintiff's great and irreparable loss and injury, by which plaintiff has been and still is being deprived of profits which it might and otherwise would have obtained, but which have been received and enjoyed and still are being received and enjoyed by the defendant by reason of its unlawful acts, as aforesaid; and plaintiff further charges that the acts of the defendant, as aforesaid, have caused and still are causing great and irreparable injury and damage to plaintiff's reputation, good name and business and great damage and injury to the reputation and good name of fountain pens of plaintiff's manufacture.

71 Forasmuch as your orator can have no adequate relief except in this Honorable Court and to the end, therefore, that the defendant may, if it can, show why your orator should not have the relief thereby prayed, and that defendant may be required to make full disclosure and discovery of all matters aforesaid and according to the best and utmost of its knowledge, remembrance, information and belief, and full, true and perfect answers make to the matters hereinbefore made, stated and charged, but not under oath, answer under oath being hereby expressly waived;

To the end, therefore, that your orator may obtain relief in the premises and forasmuch as your orator has no adequate remedy at law and can obtain no adequate relief except in this Honorable Court, it humbly prays:

72 That the said Modern Pen Company, its officers, servants, agents, attorneys and workmen and each and every one of them may be restrained and enjoined provisionally and perpetually by an order and injunction of this Honorable Court from:

1. Directly or indirectly making or causing to be made, selling or causing to be sold, or offering for sale, or advertising any fountain pens of other manufacture than that of the plaintiff under the name of Waterman or Waterman's or Waterman Pens, or Waterman's Pens, or Waterman Fountain Pens, or Waterman's Fountain Pens, or Ideal Pens, or any mark or name in imitation thereof or near resemblance thereto as might be calculated to deceive or be likely to cause confusion or mistake

in the mind of the public or deceive purchasers, or which would indicate that the fountain pens so sold, represented or advertised are fountain pens of plaintiff's manufacture.

2. Infringing the plaintiff's trade-mark "Waterman's," or infringing the plaintiff's trade-mark "Waterman's Ideal Fountain Pen, N. Y.," or infringing the plaintiff's trade-mark "Ideal," and from manufacturing or selling fountain pens (other than fountain pens of plaintiff's manufacture) having the said trade-marks, or either of them, or any simulation or colorable imitation thereof, on such fountain pens whether on the holder or on the gold pen, or on labels, boxes, signs, letter heads, bill heads, circulars or advertisements accompanying or used in connection 74 with the making or selling of such fountain pens, or in any manner whatsoever.

3. Using in connection with the manufacture and sale of fountain pens (other than fountain pens of plaintiff's manufacture), the name "A. A Waterman" or "A. A. Waterman & Co." or "A. A. Waterman & Company" or "Arthur A. Waterman & Company," or any corporate, firm or individual name containing the word *Waterman, Waterman's* or *Watermans* or any mark or name containing the word *Waterman* in any form, whether the same be or be not coupled with other names or initials, or with the initials "A. A.," or with the initial "A," or whether the same be or be not used in collocation with the word "Pen" or "Fountain Pen," or other descriptive words. 75

That the said defendant may be decreed to deliver up any and all fountain pens, labels, signs, prints, packages, wrappers or receptacles in the possession of the defendant, bearing the trade-mark of your orator or any reproduction, counterfeit, copy or colorable imitation thereof, and that this Honorable Court may order the same destroyed.

That the said defendant may be decreed to render a full, true and perfect account and to pay unto your orator all the profits obtained by it by reason of its aforesaid wrongful acts and the damages thereby suffered by your orator, including the damages sustained by your orator by its loss of trade and also the dam-

76 ages to the good name and good will of your orator's said business, and to the reputation of its said Waterman's Pens," "Waterman's Fountain Pens" and "Waterman's Ideal Fountain Pen, N. Y." and "Ideal Pen," including three times the amount of the actual damages suffered by your orator on account of the use by the defendant in connection with the sale of fountain pens of any reproduction, counterfeit, copy or colorable imitation of your orator's said trade-marks, or any or either of them, and also the costs of this suit.

That your orator may have such other and further relief as to this Honorable Court may seem meet, equitable and just.

77 May it please your Honors to grant unto your orator the writ of injunction as well provisional as perpetual, issuing out of and under the seal of this Honorable Court, commanding, enjoining and restraining the said defendant, Modern Pen Company, its officers, servants, agents, attorneys and workmen and each and every one of them, as is hereinbefore in that behalf prayed.

May it please your Honors to grant unto your orator the writ of subpoena issuing out of and under the seal of this Honorable Court, directed to the said defendant, Modern Pen Company, commanding it on a certain day and under a certain penalty to be and appear in this Honorable Court, then and there to answer this bill and to stand to and abide such order and decree as may be made against it.

78 And your orator will ever pray, etc.

Dated, New York, July 6th, 1910.

L. E. WATERMAN COMPANY,
By Frank D. Waterman,
President.

WATSON & RAYMOND,
Solicitors for Plaintiff,
No. 10 Wall Street,
New York, N.Y.

Samuel S. Watson,
Walter B. Raymond,
Of Counsel.

State of New York,
City and County of New York, } ss.:
Southern District of New York,

Frank D. Waterman, being duly sworn, deposes and says: That he is the president of the plaintiff herein; that he has read the foregoing amended bill of complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

That the said plaintiff is a corporation and the reason why this verification is not made by the plaintiff is because of that 80
fact. That deponent's knowledge and the grounds for his information and belief are derived from his participation in the management of the business of said plaintiff, as its president.

FRANK D. WATERMAN.

Sworn to before me this
6th day of July, 1910.
Agnes M. Vikberg,
Notary Public,
Kings County, No. 27.
Certificate filed in New York County.
(Notarial Seal.)

Order granted. 81

L. H.,
U. S. J.

Copy received July 7, 1910.

A. S. BACON,
Attorney for Defendant.

U. S. Circuit Court, Southern District of N. Y. Filed July 16, 1910. John A. Shields, Clerk.

82

Replication.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

against

MODERN PEN COMPANY,
Defendant.

83

The replication of the above named plaintiff to the answer of the above named defendant.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant, for replication thereunto sayeth, that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

84

WATSON & RAYMOND,
Solicitors for Plaintiff,
Office & Post Office Address,
No. 10 Wall Street,
New York, N. Y.

Samuel S. Watson,
Of Counsel.

Copy received, Sept. 3, 1910.

ALEX. S. BACON,
Deft.'s Atty.

U. S. Circuit Court, Southern District of N. Y. Filed Sept. 3, 1910. John A. Shields, Clerk.

Order Fixing Time to Take Proofs.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

86

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

against

MODERN PEN COMPANY,
Defendant.

On reading and filing the affidavit of plaintiff's attorney and notice of motion, with proof of due service thereof, on the attorney for the defendant, and after hearing Samuel S. Watson, Esq., for the plaintiff, and Alexander S. Bacon, Esq., for the defendant; 87

It is, on motion of Samuel S. Watson, Esq., attorney for the plaintiff,

Ordered, that the plaintiff shall have until the 10th day of April, 1911, within which to take its *prima facie* proofs, or evidence in chief, and the defendant shall have two weeks thereafter in which to put in its testimony, and the complainant shall have 10 days thereafter in which to put in its rebuttal testimony.

ALFRED C. COXE,
Judge of the United States Circuit Court
for the Southern District of New York.

88 *Stipulation*

Filed Feb. 24, 1911.

JOHN A. SHIELDS,
Clerk.

Copy received Feb. 25, 1911.

A. S. BACON,
Atty. for Deft.

Stipulation.

89 UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

against

MODERN PEN COMPANY,
Defendant.

90 It is hereby stipulated by and between the parties hereto, by their respective solicitors, that due notices of the taking of the depositions contained in this printed record were given to opposing counsel; that the officers before whom said depositions were taken were duly qualified to act as such, and that the witnesses appeared before and were duly sworn and cautioned by said officers, respectively, in accordance with the statutes in such cases made and provided and that said officers, respectively, returned said depositions to the Clerk of this Court, with their certificates in due and proper form, in accordance with the statutes in such cases made and provided, which certificates are on file annexed to said depositions, respectively, in the Clerk's

office of this Court; that said notices to take said depositions 91
and the certificates of the officers annexed thereto in returning said depositions as aforesaid, are omitted from this printed record by agreement of counsel, and by this stipulation.

Dated, New York, May 3, 1911.

WATSON & RAYMOND,
Solicitors for Plaintiff.
ALEXANDER S. BACON,
Solicitor for Defendant.

UNITED STATES CIRCUIT COURT,

92

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY, Plaintiff, vs. MODERN PEN COMPANY, Defendant.	In Equity.

Proofs for final hearing on the part of the plaintiff under the Equity Rules, and Act of Congress as amended, and in accordance with the Statutes of the United States, and in pursuance of the rules and practice of this Court, taken before Frederick M. 93
Adams, an Examiner of this Court, at the office of Watson & Raymond, at No. 10 Wall Street, Borough of Manhattan, New York City, on the 12th day of December, 1910, at 10:30 o'clock in the forenoon, pursuant to notice hereunto annexed.

Appearances:

Samuel S. Watson, for Plaintiff.
Alexander S. Bacon, for Defendant.

94 *William I. Ferris*

Mr. Bacon: I note my objection to the taking of testimony, on the ground that more than ninety days have elapsed since the service of the replication, on September 3, 1910.

And I also make the following offer, which I spread on the record.

Hereto attached and marked Defendant's Exhibit A of this date.

WILLIAM I. FERRIS, a witness called on behalf of the plaintiff, being duly sworn, deposes as follows:

95 *Direct-examination by Mr. Watson*:

Q1. Please state your name, age, residence and occupation? A. William I. Ferris; 43 years old; I reside in Westfield, New Jersey; I am secretary of the L. E. Waterman Company, and my principal duties are in charge of the Manufacturing Department of the business.

Q2. How long have you been connected with the plaintiff company? A. Since its organization, in 1887.

Q3. What have been your duties generally during that period? A. I have been a director and officer in the company and as such I have had certain executive duties to perform, but my principal duties have been in charge of the Manufacturing Department of the business, the making of the fountain pens.

96 Q4. Were you in the fountain pen business prior to your connection with the plaintiff company? A. Yes.

Q5. With whom were you connected? A. With the Ideal Pen Company which was the name under which L. E. Waterman Company operated the business of making and selling fountain pens and accessories.

Q6. Do you mean L. E. Waterman Company or L. E. Waterman? A. L. E. Waterman.

Q7. The L. E. Waterman referred to is Mr. Lewis E. Waterman? A. Lewis E. Waterman.

Q8. How long were you connected with the Ideal Pen Company, or L. E. Waterman, prior to the incorporation of the plain-

tiff company? A. I was first employed by the Ideal Pen Company, by Mr. Lewis E. Waterman, in August, 1885.

Q9. Were you employed continuously from that time until the plaintiff was incorporated? A. I was.

Q10. What were your duties with the Ideal Pen Company? A. In charge of the Manufacturing Department.

Q11. Were you one of the incorporators and organizers of the plaintiff company? A. I was.

Q12. Do you know what business or property the plaintiff company acquired in regard to the fountain pen business? A. It took over the business of the Ideal Pen Company.

Q13. What did that consist of, do you know? A. It consisted 98
of all the business in connection with the making and selling of pens under the name under which L. E. Waterman operated the business.

Q14. Did it take over any patent rights or trade-marks of any kind? A. It took over all the patent rights and trade-marks that the Ideal Pen Company owned or controlled.

Q15. What has been the business of the L. E. Waterman Company since it was organized? A. The manufacturing and selling of fountain pens, parts and accessories.

Q16. Do you know, and if so state, what trade-marks were acquired by the L. E. Waterman Company from the Ideal Pen Company or Lewis E. Waterman? A. The trade-marks "Waterman's," "Waterman's Ideal Fountain Pen, N. Y." and "Ideal." 99

Q17. How long to your knowledge had these trade-marks been used by L. E. Waterman or the Ideal Pen Company? A. They were used at the time of my connection with the business and continuously ever since.

Q18. Have they been used continuously since the plaintiff company was organized? A. They have.

Q19. How were these trade-marks used in connection with the goods? A. In imprinting the fountain pens.

Q20. Marking them on the goods? A. Marking them on the goods; also on the supplies and stationery.

Q21. Were these trade-marks, or any of them, marked on the boxes in which the goods were sold and distributed? A. Yes.

100 *William I. Ferris*

Q22. How long has that been the practice of the plaintiff company? A. Ever since my connection with the business.

Q23. And was this practice carried on by the Ideal Pen Company? A. Yes.

Counsel for the respective parties agree to waive the certification of Patent Office copies of trade-marks and patents and that the usual Patent Office copies of trade-marks and patents may be used with the same force and effect as certified copies.

Plaintiff introduces in evidence Patent Office copy of plaintiff's trade-mark "Ideal," registered in the United
101 States Patent Office, September 18, 1900, and asks the Examiner to mark it Plaintiff's Exhibit No. 1.

Marked Plaintiff's Exhibit No. 1, December 12, 1910. F. M. A., Exr.

Also registration of plaintiff's trade-mark "Ideal" in the United States Patent Office, registered February 13, 1906.

Marked Plaintiff's Exhibit 2, December 12, 1910. F. M. A., Exr.

Also Patent Office copy of plaintiff's trade-mark "Waterman's Ideal Fountain Pen, N. Y.," registered February 5, 1901.

Marked Plaintiff's Exhibit 3, December 12, 1910. F.
102 M. A., Exr.

Also registration of plaintiff's trade-mark "Waterman's Ideal Fountain Pen, N. Y.," registered February 6, 1906.

Marked Plaintiff's Exhibit 4, December 12, 1910. F. M. A., Exr.

Also plaintiff's trade-mark "Waterman's," registered in the United States Patent Office, January 15, 1907.

Marked Plaintiff's Exhibit 5, December 12, 1910. F. M. A., Exr.

Q24. Where were the goods bearing these trade-marks sold, if you know, by the plaintiff company? A. They were sold all over

the United States and very early in the business were sold in foreign countries.

Q25. In what foreign countries? A. Most all foreign countries on the globe.

Q26. Have they been sold during this period that you have been connected with the business, in different States of the United States? A. They have.

Q27. And is it a fact that these trade-marks "Ideal," "Waterman's Ideal Fountain Pen, N. Y.," and "Waterman's" have been used continuously on goods which have been sold in the different States of the United States and in foreign countries ever since you have been connected with the business? A. It is. 104

Q28. Is it a fact that the fountain pens made and sold by the plaintiff have been generally known, called for by the trade and the public generally, under these trade-marks? A. It is.

Q29. And these names which have been called were what? A. The names which the plaintiff's goods have been known by.

Q30. What were those names? A. "Waterman's," "Waterman's Ideal Fountain Pen, N. Y.," "Waterman's Fountain Pen" and "Ideal Pen."

Q31. Is it not a fact that they have largely been known as Waterman's pens also? A. "Waterman's Pens," "Ideal Pens," "Waterman's Fountain Pens."

Q32. By what name is the plaintiff company usually known by the trade and the public A. "L. E. Waterman Company," "Waterman Company," "Waterman Fountain Pen Company," 105 "Waterman's Ideal Fountain Pen Company."

Q33. Do you know whether the plaintiff is now the owner of the trade-marks which have been introduced in evidence, Plaintiff's Exhibits 1 to 5 inclusive? A. Yes, they are.

Q34. I show you some envelopes and ask you if you know where they came from (handing witness a package of envelopes)? A. They are envelopes that were received through the mail from persons writing us about pens.

Q35. Are these envelopes received in the usual course of business? A. They are.

106 *William I. Ferris*

Mr. Watson: Plaintiff offers a bunch of envelopes in evidence and asks that they be marked Plaintiff's Exhibit No. 6.

Mr. Bacon: Objected to as incompetent, irrelevant and immaterial.

Marked Plaintiff's Exhibit 6, December 12, 1910. F. M. A., Exr.

Q36. Is it a fact that the plaintiff and its predecessor in business have advertised extensively its goods under the trade-marks and trade names that I have mentioned? A. It is.

Q37. How long has that been the practice? A. Ever since
107 I have been connected with the business in 1885; that is, of the plaintiff's predecessor; and also the time when I have been connected with the plaintiff company.

Q38. Of late years this advertising has been very extensive, has it not? A. Yes, increasing largely from year to year.

Q39. Will you please produce one of the fountain pens of the plaintiff's manufacture which bears the trade name you mentioned? (Witness produces a fountain pen.)

Mr. Watson: The fountain pen produced by the witness is offered in evidence and the Examiner is asked to mark it Plaintiff's Exhibit No. 7.

Marked Plaintiff's Exhibit No. 7, December 12, 1910. F. M. A., Exr.

108 Mr. Watson: The pen offered in evidence, Exhibit No. 7, bears the imprint, "Waterman's Ideal Fountain Pen, N. Y." Around the word "Ideal" is a representation of the globe. Underneath the above is the following: "Pat'd May 23, 1899 & Aug. 4, 1903, U. S. A."

Q40. Will you produce one of the fountain pens bearing the trade-marks you have mentioned which plaintiff put on the market prior to the time the company stamped goods as shown in Exhibit 8? (Witness produces a fountain pen.)

Mr. Watson: The fountain pen produced by the witness is offered in evidence and the Examiner is asked to mark it Exhibit No. 8.

Marked Plaintiff's Exhibit 8, December 12, 1910. F. M. A., Exr.

Mr. Watson: This pen bears the imprint "Waterman's Ideal Fountain Pen, N. Y." "Pat'd Feb. 12 & Nov. 4, 1884."

Q41. Are the pens you have produced, Plaintiff's Exhibits 7 and 8, fair samples of the pens put on the market by the plaintiff and bearing said trade-marks? A. They are.

Q42. How long has the plaintiff been manufacturing pens of the grade and style of Plaintiff's Exhibits 7 and 8? A. We have been manufacturing that style since 1896, or 1897, but of the grade since 1887—grade and quality. 110

Q43. When you refer to the grade and quality to what do you refer? A. To the quality of the material and the workmanship.

Q44. Has anything come to your notice which shows confusion in the trade or in the minds of the public between the fountain pens of plaintiff's manufacture bearing the trade-marks and trade names you have mentioned and those put on the market by the defendant which bear the name "A. A. Waterman & Co."? A. Yes.

Q45. Please state what? A. We receive from persons sending in letters—

Mr. Bacon: Objected to as incompetent, irrelevant and immaterial, and I move to strike it out. 111

A. (Continued) Stating that one of our pens, either asking to have it exchanged or repaired and on looking it up we find that it is one of the defendant's pens and not our make.

Q46. How do you know it is defendant's make? A. Because it is stamped "A. A. Waterman & Co." and not with our trade-mark, "Waterman's Ideal Fountain Pen, N. Y."

Q47. How long has this state of facts been going on? A. It has been going on for sometime; more noticeably in the last few years.

112 *William I. Ferris*

Q48. Do you know who are the officers of the Modern Pen Company during the last couple of years, or thereabouts? A. I believe William L. Chapman, Isaac E. Chapman and Hobart W. Geyer.

It is admitted that Isaac E. Chapman is president of the Modern Pen Company, William L. Chapman is secretary and Hobart W. Geyer is the treasurer; that Mr. Geyer has been treasurer only for the last two months; prior to that time Mr. William L. Chapman was treasurer.

113 Q49. Have you ever had any conversations with any of the officers of the Modern Pen Company regarding their discontinuance of the name "A. A. Waterman & Co." from their goods? A. Yes, with William L. Chapman.

Q50. Where did that conversation take place? A. In our office on Broadway. It came up in connection with making some pens for the Aikin-Lambert Company at which time he stated that they were going to discontinue marking the goods "A. A. Waterman & Co."

Q51. Who was present at that conversation besides you and Mr. Chapman? A. I am not sure that any one was at that particular time, though Mr. F. D. Waterman was in and out during the visit.

114 Q52. You speak of pens for Aikin-Lambert Company. Were those fountain pens? A. Gold pens.

Q53. They were not fountain pens? A. No, they were gold pens.

It is admitted that the notice which is now offered in evidence as Plaintiff's Exhibit No. 9 was sent out to the trade by the defendant on or about its date, attached to a catalogue of defendant, which shows styles and designs and advertising matter of the Modern Pen Company and of fountain pens marked "A. A. Waterman & Co."

Marked Plaintiff's Exhibit 9, December 12, 1910. F. M. A., Exr.

Q54. Did this notice, Plaintiff's Exhibit 9, come to your notice about the time you had this conversation with Mr. William L. Chapman to which you have just referred? A. Shortly after that time.

CROSS-EXAMINATION by Mr. Bacon:

XQ55. Was the Ideal Pen Company a corporation or a firm? A. A firm or a name which the business was conducted under.

XQ56. Who conducted it? A. Lewis E. Waterman, who was the manager.

XQ57. Was he the only person interested? A. Yes, to my 116
knowledge.

XQ59. Did you ever put out any pens that did not have the words "Ideal" upon them? A. I don't think so.

XQ58. Were any trade-marks ever registered earlier than the dates indicated by Exhibits 1 to 5? A. Not that I know of.

XQ60. Did all of the pens ever manufactured or sold by L. E. Waterman & Co. bear the mark "Waterman's Ideal Fountain Pen, N. Y."? A. All of them with the exception of possibly some metal covered ones which also had "Waterman's" on.

XQ61. Those that were entirely covered with metal were how marked? A. Always "Waterman's;" sometimes "Waterman's Ideal" and "Waterman's Ideal Fountain Pen." Those marks were changed during the various years owing to different places 117
where we marked the metal on the holders.

XQ62. When did you last mark any pens simply "Waterman's"? A. We make some now.

XQ63. Are there any so marked except such as are wholly metal holders? A. Wholly or part metal holders.

XQ64. How many have been so marked within the last year? A. I should say several thousand.

XQ65. And they are marked simply "Waterman's"? A. "Waterman's."

XQ66. How are your gold pens marked? A. "Waterman's Ideal."

118 *William I. Ferris*

XQ67. That is always the case, is it? A. Yes, "Waterman's Ideal, New York."

XQ68. When did you first begin to put on the patent marks "May 23, 1899" and "August 4, 1903"? A. At the time that we started to use the patents which they covered; I think in the early part of 1902 or 1903, or about the time we commenced to use the features covered by the patents. I think the patents were issued a little time before we started to use the improvements.

XQ69. To what does this patent of May 23, 1899, refer; does it refer to a whole pen or to some part of a pen? A. Part of a pen.

119

XQ70. What is that? A. That is the spoon feed, which has the overflow pocket for the ink outside of the feed duct.

XQ71. That is all that that patent refers to? A. Yes.

XQ72. What does the patent of August 4, 1903 refer to? A. That refers to the feed with the wide back—wide or flat back.

XQ73. Then both the patent of 1899 and the patent of 1903 refer to feed exclusively; is that right? A. Yes.

XQ74. And your basic patents of 1884 have expired? A. Yes.

XQ75. Where do you manufacture your pens? A. We manufacture the gold pens in Canada; we manufacture the complete pen holder. Now we manufacture gold pens in New York and the rubber holders are manufactured in Seymour, Connecticut.

120

XQ76. By whom? A. A concern operating under the name of H. P. & E. Day Co. While years ago they made holders for various people, they make holders exclusively for us, with the exception of one party.

XQ77. And under whose supervision? A. The factory at Seymour is marked as the Waterman factory. It is known as the Waterman factory by people who see it, who go by in the trains, because that is the only name that appears on it. Those holders which they manufacture are shipped to New York. We do the chasing and other work on them and assemble them and

make the clip caps and mountings and put them on here in New York.

XQ78. The H. P. & E. Day Co. are a wholly different concern from the L. E. Waterman Co., are they not? A. Yes.

XQ79. What other concerns do they manufacture holders for? A. Only one party to my knowledge; that is a man named Brown; that is fountain pens. They may make a few small dip holders as they did years ago for some dealer, but nothing in the fountain pen line.

XQ80. They have a right to manufacture for anybody they please? A. Yes.

XQ81. How long since they have been manufacturing mostly for your people? A. Say the last twelve or fifteen years. 122

XQ82. But during that time they have also manufactured for a great many other concerns, have they not? A. More in the earlier years, but it has gradually been reduced until now there is only one to my knowledge.

XQ83. What other parts of a completed pen do you buy from other people? A. We, of course, buy raw material, that is the metal for the mountings, &c.

XQ84. You have not always manufactured gold pens in the United States, have you? A. Not in the early years. We had them made under contract.

XQ85. How long since you have been having them made under contract? A. From very early, from the time of my connection with the business up to the time the plaintiff started its own factory. At that time we had a few made, but the amount gradually grew less. 123

XQ86. When did your factory start? A. About eight or nine years ago.

XQ87. Have you not bought gold pens from other people in the last eight or nine years? A. Yes.

XQ88. From whom have you bought? A. Bought them from various pen makers.

XQ89. Kindly name them? A. Some from the Fairchild Company.

124 *William I. Ferris*

XQ90. Le Roy W. Fairchild? A. Yes, the old name; I think they call it the Fairchild Company now; and some from Armeny & Marion and some from Mabie, Todd & Co.

XQ91. Mabie, Todd & Bard? A. Yes, and some from the Aikin-Lambert Company.

XQ92. Some from M. T. Horn Company? A. Yes.

XQ93. Then during the last nine or ten years you have bought the various parts of pens from various parties and assembled them in New York; is that the way it was done? A. We have made in the last nine or ten years the greater part of our pens. We bought a few and assembled them here, of the
125 holders which we received from Seymour on which we do the chasing and other work needed to finish the holder.

XQ94. You do not manufacture your holders at all? A. We do certain work on them to make them finished holders. We do all the chasing on them, which is part of the labor necessary to make up a complete holder.

XQ95. A good many are put out plain, not chased at all? A. Some are.

Mr. Watson: Plaintiff's counsel objects to all this line of testimony on the ground that it is entirely immaterial and irrelevant.

XQ96. Can you think of any others from whom you have bought parts of pens and assembled them?

126

Mr. Watson: The same objection.

A. I do not.

XQ97. Who are the officers of the plaintiff? A. Frank D. Waterman is president and treasurer; Lewis E. Waterman, vice president; William I. Ferris, secretary.

XQ98. The original Lewis E. Waterman died when? A. In 1901.

XQ99. And the present Lewis E. Waterman, vice president, was his son? A. Yes.

XQ100. What relation is Frank D. Waterman to the original Waterman? A. Nephew.

XQ101. Do you manufacture and sell any pens that are not marked with the name "Waterman"? A. We make a pen which we call "Pen and Ink." It is stamped "Pen and Ink."

XQ102. That is a fountain pen? A. Yes.

XQ103. Remex? A. Yes.

XQ104. Is that the same thing? A. It is a similar pen.

XQ105. Then you make several cheaper grades of pens, do you that are not marked "Waterman" at all? A. Well, these two.

XQ106. That is all? A. Yes.

XQ107. Do you make anywhere a completed fountain pen without assembling the parts—some of the parts obtained from other people? A. We make in Canada all the pens complete, both the rubber holder and the pen. 128

XQ108. And that is the only country? A. Here they are made as I explained to you, the holders coming from Seymour.

XQ109. And in the Canada factory you make them for local consumption in Canada? A. In Canada and to ship to foreign countries.

XQ110. They are shipped to foreign countries from New York? A. Yes.

XQ111. You ship these assembled pens to various countries from this port? A. The completed pens.

XQ112. Do you know anything of the purchase of gold pens for use in fountain pens by the plaintiff of the defendant? A. Not by the plaintiff; some were purchased by the Aikin-Lambert Company. 129

XQ113. The purchase was made through your president, Mr. Frank D. Waterman, was it not? A. I think I placed the order myself with Mr. Chapman.

XQ114. Did you place the order as for Aikin-Lambert Company or for L. E. Waterman? A. Aikin-Lambert Company.

XQ115. Do Aikin-Lambert Company manufacture gold pens for everybody or just for you? A. More for their own use and our use.

130 *William I. Ferris*

XQ116. Were these pens that were manufactured by the Modern Pen Company, or bought from them, used in the manufacture of L. E. Waterman? A. No, Aikin-Lambert.

XQ117. What was the name of the pen they were used for? A. They put them in a holder which they called Capital. These pens I remember were simply stamped 14 karat. That is the way they marked all pens that they used in that matter.

XQ118. Who were the officers of the Aikin-Lambert Company? A. William E. Smith, president; Frank D. Waterman, treasurer; William I. Ferris, secretary.

XQ119. Is W. E. Smith connected in any way with the L. E.
131 Waterman Company? A. As salesman.

Mr. Watson: Plaintiff objects to this line of testimony as entirely immaterial and irrelevant, and gives notice that he will move at final hearing to have the same stricken out.

XQ120. How long have you known A. A. Waterman? A. That runs back a good many years. He was connected with us back in the 90's.

XQ121. How long was he employed by the L. E. Waterman Company? A. I should say three or four years.

XQ122. When did he leave? A. It was in 1896, or thereabouts; 1896 or 1897.

132 Mr. Watson: Plaintiff objects to all this line of testimony as entirely immaterial and irrelevant to any issues in this case and gives notice that he will move at final hearing to have the same stricken out.

XQ123. When he left were you an officer of the plaintiff? A. Yes.

XQ124. What office did you hold in 1897? A. I think I was vice president at that time.

XQ125. Was Mr. Waterman related in any way to Mr. Lewis E. Waterman? A. I never understood that he was.

XQ126. Did you know of the fact of his having started in business with a man named Gibson in the year 1897, under the firm name of "A. A. Waterman & Co."?

Mr. Watson: Plaintiff objects to this question and all this line of testimony as entirely irrelevant and entirely immaterial to any issues in this case, and gives notice that he will move at the final hearing to have the same stricken out.

A. After it became publicly known.

XQ127. It was so publicly known early in the year 1897, was it not? A. I believe that is the date.

XQ128. And you began an action against Mr. A. A. Waterman and Mr. Gibson in the Supreme Court of New York County in that year, did you not? A. I believe so.

XQ129. And which finally terminated in a decree? A. Yes. 134

XQ130. You knew all about that litigation? A. In a general way.

XQ131. And you saw at that time a copy of the decree of September 3, 1898? A. Yes.

Mr. Bacon: The copy decree I offer in evidence.

The decree is marked Defendant's Exhibit B, December 12, 1910. F. M. A., Exr., and the same is to be annexed to this deposition.

XQ132. You knew, did you not, that immediately after this decree was entered, in September, 1898, Mr. A. A. Waterman continued to manufacture and sell fountain pens and mark them "A. A. Waterman & Co."? A. I believe he did. 135

XQ133. And you knew that at that time? A. Yes.

XQ134. And you knew that Mr. Gibson died about 1899, did you not? A. Yes.

XQ135. And you know that Mr. A. A. Waterman continued to manufacture fountain pens and mark them "A. A. Waterman" after the death of Mr. Gibson? A. Yes.

XQ136. And you knew that Mr. Waterman entered into a new partnership about the year 1901, calling the firm "A. A. Waterman & Co.," and that it was composed of Mr. Waterman, Mr. Hobart W. Geyer and William G. Frazer? A. Yes, after it transpired.

XQ137. And you knew that for many years that firm of A. A. Waterman & Co. continued to manufacture and sell fountain pens and advertise them as A. A. Waterman & Co.'s pens? A. Yes.

XQ138. This fact was well known to all people in the trade in New York, was it; they were a well known firm? A. They were well known to the trade, but a great many of them confused them with the plaintiff company.

XQ139. Were their pens also called "Waterman Pens"? A. They were by people that had them and did not know any Waterman but the "Waterman Ideal."

137 XQ140. Were they so-called by people who knew only A. A. Waterman pens? A. In a great many instances they had a pen, a Waterman, and it was "Waterman" irrespective of the marking "A. A. Waterman" on it.

XQ141. That was true of people generally, was it not? A. If a person had bought an A. A. Waterman pen he called it a "Waterman," and if he bought an L. E. Waterman pen he called it a "Waterman"? A. Any pen bearing "Waterman" was referred to as a "Waterman Pen."

XQ142. The old firm of A. A. Waterman & Co. composed of Waterman, Frazer and Geyer advertised largely their A. A. Waterman pen? A. Yes, I saw their advertisement.

XQ143. And they were openly in the market manufacturing and selling pens bearing the trade-name of A. A. Waterman &

138 Co., were they not? A. Yes.

XQ144. Made no concealment of it? A. Yes.

XQ145. And you knew all about it? A. Yes.

XQ146. And all the officers of your company knew? A. I presume so.

XQ147. They knew that A. A. Waterman & Co. were using that name as a trade name throughout the United States and in foreign countries from 1901 up to 1905? A. Yes.

XQ148. And also knew of the organization of the new firm of A. A. Waterman & Co. on or about the month of June, 1905; the new firm consisting of A. A. Waterman, Isaac E. Chapman and William L. Chapman? A. After it transpired.

XQ149. You knew it almost immediately, didn't you? A. I don't know as to that. We knew that there was a change and probably saw it in the trade papers, the notice of it.

XQ150. They advertised the change at once, didn't they? A. I don't remember as to that.

XQ151. Then this new firm of A. A. Waterman & Co. from June, 1905, until July 1, 1906, manufactured and sold pens under the trade name of A. A. Waterman & Co., just as the old firm had done? A. Yes.

XQ152. And advertised it freely? A. Yes.

XQ153. Then to your own personal knowledge fountain pens have been manufactured and sold openly in the market under 140
the name of A. A. Waterman & Co., or A. A. Waterman, continuously since September, 1898, up to the present time? A. Yes.

XQ154. And the plaintiff, L. E. Waterman Company has not had the exclusive use of the name "Waterman" in the trade during those years; is not that so? A. I don't know that I am just clear as to what you mean, Colonel.

XQ155. Well, I hope the question is clear. L. E. Waterman Company has not been the only company or firm that has been using the name "Waterman" in connection with the manufacture and sale of fountain pens during the period from 1898 to 1910? A. No, there are other companies that have been in the field.

XQ156. Have you ever known the firm of A. A. Waterman 141
& Co., or any one of these firms of A. A. Waterman & Co. to advertise their fountain pens other than as A. A. Waterman & Co. pens? A. No, I don't know that the firm has, but dealers through the country have.

Mr. Bacon: I move to strike that out as not responsive.

XQ157. You have never known of any one of these firms of A. A. Waterman & Co. having authorized any third person to sell or advertise pens other than as A. A. Waterman & Co. pens? A. No.

XQ158. Did you know during the year 1906, 1907 and 1908 of the L. E. Waterman Company, or anybody connected with

142 *William I. Ferris*

them negotiating for the purchase of the assets of the Modern Pen Company, A. A. Waterman & Co. and their trade names and patents?

Mr. Watson: Objected to as entirely immaterial and irrelevant to any issue in this case; that even though it should appear that the purchase had been contemplated, the fact that a concern should attempt to buy its peace to save litigation is no waiver of their rights.

A. No.

XQ159. Did you participate in any negotiations by any party
143 relative to the purchase of said assets, business and names?

Mr. Watson: Objected to as entirely immaterial to any issue in this case, and notice is given that at final hearing a motion will be made to strike out all this line of testimony as entirely immaterial.

A. Yes.

XQ160. In what manner? A. In going over the machinery and plant to see to what extent it could be used in developing the Aikin-Lambert Company.

XQ161. Whom did you talk with? A. William L. Chapman, Hobart W. Geyer.

XQ162. Did you tell them for whom you were acting in making this examination? A. Mr. William L. Chapman under-
144 stood it.

XQ163. Did you tell him, I said? A. He was told several times that the Waterman Company was not interested directly.

XQ164. Was it indirectly? A. No, sir, there was nothing in it that they could use in the way of material or machinery, because their own plants were well equipped.

XQ165. Is it not a fact that the Aikin-Lambert Company and the L. E. Waterman Company are substantially the same? A. No, it is an incorporation of its own; its officers and stockholders are independent of the L. E. Waterman Company.

XQ166. It is the L. E. Waterman Company that has an office in Canada, is it not? A. No, it is L. E. Waterman Company, Limited.

XQ167. Is that different from L. E. Waterman Company? A. It is a separate corporation.

XQ168. The stockholders the same? A. Some of the stockholders.

XQ169. Substantially all of the stockholders the same? A. Yes.

XQ170. Substantially all of the stockholders of the L. E. Waterman Company and the Aikin-Lambert Company the same? A. No, there are people in the Aikin-Lambert Company that are not interested in the Waterman Company.

XQ171. What proportion of the stock of the Aikin-Lambert Company is held by people who are stockholders in the L. E. Waterman Company? 146

Mr. Watson: Objected to as entirely immaterial to any issue in this case and the attention of the Court is called to the fact that counsel for the defendant is unduly extending the record and a motion will be made at final hearing to strike out this line of testimony and that the cost of taking the same shall be taxed against the defendant.

A. They hold less than a majority of the stock.

XQ172. That is the L. E. Waterman Company? A. The people not interested, I understood the question, in the L. E. Waterman Company.

XQ173. They own less than a majority? A. Yes. 147

XQ174. That is, the L. E. Waterman Company stockholders own a majority of the stock of the Aikin-Lambert Company? A. Yes.

XQ175. That is they own a control? A. Yes.

XQ176. How large a control do they own? A. They own the greater part of it.

XQ177. Is it not substantially all? A. Yes.

XQ178. Are the different stockholders more than barely enough to qualify the Board of Directors?

Mr. Watson: Objected to as entirely immaterial.

148 *William I. Ferris*

A. They about cover the Board of Directors.

XQ179. That is all? A. Yes.

XQ180. Then it is a fact that the Canada company, L. E. Waterman and Aikin-Lambert Company are substantially the same as far as officers and stockholders are concerned?

Mr. Watson: The same objection.

A. Yes.

XQ181. State what conversation you had with Mr. William L. Chapman in relation to this purposed purchase? A. Several times he called at our office, and talked the matter over; principally what I had to do with it was as to how far we could
149 make use of the machinery, tools, &c., in connection with the plant of the Aikin-Lambert Company.

XQ182. Did you mention the Canadian plant? A. Possibly.

XQ183. Do you know Mr. Frazer, formerly of A. A. Waterman & Co.? A. No.

XQ184. You have had no conversation with him, then? A. I never met him.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ185. Is it a fact that the fountain pens made in the Canadian factory are also marked with the trade-marks "Waterman Ideal Fountain Pen," "Ideal," and "Waterman's" substantially
150 in the same manner as those made in the United States? A. Yes.

RDQ186. And that has always been the fact while they have been making pens in Canada? A. It has.

RDQ187. Is it a fact that all the time that the plaintiff has been making metal holders, that is, holders partly of rubber and partly of metal, silver, gold, &c., that the plaintiff has marked a considerable number of these pens with the name "Waterman's" alone, with the patent dates? A. Yes.

RDQ188. How long has that practice continued of marking the goods which are known as mounted goods, that is, rubber holders, embellished by gold and silver mountings—marked by

the plaintiff with the name "Waterman's" alone? A. Ever since we have been mounting them that way.

RDQ189. How long has that been? A. Running back a great many years. In the early years there were fewer all-mounted pens used.

RDQ190. Did you begin that practice ten years ago, fifteen years ago, twenty years ago, or when? A. Fifteen or twenty years ago.

RDQ191. You have continued that practice ever since? A. We have

RDQ192. And those pens did not have the mark or stamp "Ideal" on them? A. Not all of them. 152

RDQ193. What do you mean by metal goods? A. Goods that have the rubber mostly covered with metal so that the rubber is not exposed; either covered with gold or silver.

RDQ194. Do you mean all covered, or partly covered? A. All covered except possibly where the caps fit—where the ends fit.

RDQ195. Then all these pens are made with a foundation of rubber, with a gold or silver or other metal mounting on the outside; is that right? A. Yes.

RDQ196. When you refer in your testimony to pens bearing the name "A. A. Waterman" and "Waterman's Ideal Fountain Pen," all known as "Waterman," what do you mean by that? A. I mean that the public know the pens that have "Waterman" on as pens of the original Waterman, "Waterman's Ideal Fountain Pen." 153

RDQ197. When they call a pen "Waterman" they mean a pen of plaintiff's make? A. Of plaintiff's make.

RDQ198. Has it come to your knowledge that dealers selling fountain pens marked "A. A. Waterman & Co." put out by the defendant, have advertised them as Waterman pens?

Mr. Bacon: Objected to as incompetent, irrelevant and immaterial and not the best evidence.

A. They have, yes.

RDQ199. Has this been very general, to your knowledge?

154 *William I. Ferris*

Mr. Bacon: The same objection, and notice is given that all these exceptions and objections will be utilized at the final hearing.

A. Yes.

RDQ200. Has it come to your knowledge that persons purchasing these pens marked "A. A. Waterman & Co." are deceived or led to believe that they were pens of plaintiff's manufacture?

Mr. Bacon: The same objection.

A. It has.

155 RDQ201. To what extent has this been known to you? A. It occurs very frequently. It would principally come through our repair or mail department where people write in stating they have one of our pens and wish to exchange it or repair it, or some other attention, and when the pen is received we find it is marked "A. A. Waterman & Co."

Mr. Bacon: I move to strike out the answer on the ground that it is not the best evidence; the letters themselves are the best evidence.

RDQ202. The basic patents referred to, those of February 12, 1884, and November 4, 1884, referred to what part of the pen in particular? A. The feeding device.

156 RDQ203. What utility or function does the feeding device perform in connection with the manufacture and sale and use of fountain pens? A. It controls and regulates the flow of the ink from the reservoir to the point of the pen, and it is the principal piece in the construction of the holder which makes it successful.

RDQ204. And without a satisfactory feeding device? A. The pen would be of little use and a very unsatisfactory writing instrument.

RDQ205. Were all the pens which you purchased from the defendant used by the Aikin-Lambert Company and not by the plaintiff? A. They were, as far as I know.

RDQ206. Were any of these pens so far as you know, used by the plaintiff? A. No, sir; they were not.

RDQ207. Were they sold by the plaintiff? A. They were not.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ208. And what you know about this confusion comes from what other people have told you or written you, does it not? A. Yes.

RXQ209. And if a man had purchased an A. A. Waterman & Co. pen he would be just as apt to call that a Waterman pen as though he had purchased an "Ideal" pen, wouldn't he? A. If he should purchase an A. A. Waterman pen? 158

RXQ210. Yes. A. He would, unless he was fully posted about the manufacture.

RXQ211. He might not know of the existence of L. E. Waterman or of the "Ideal" pen? A. That is so.

RXQ212. When was the Canada company organized?

Mr. Watson: Objected to as not proper re-cross examination.

A. I think about five years ago.

RXQ213. And when did this community of interest with the Aikin-Lambert Company occur? A. Five or six years ago.

RXQ214. About the same time the Canada company was organized? A. I think so. Possibly the Canada company was a little earlier. 159

RXQ216. Then at substantially the same time these three companies became practically the same; is that right? A. Well the interests became identified.

RXQ217. And the difference in stock holdings was very small? A. Yes.

RXQ218. And for purposes of organization only?

Mr. Watson: Same objection as entirely immaterial.

A. Yes.

160

RXQ219. The reason the word "Waterman" alone was put on the metal covered holders was because there was not room for the whole name; is not that the reason? A. In a great many of those cases "Waterman" was put on the metal alone, and sometimes on the rubber there was some imprinting; but that was the principal reason for not marking the whole barrel down the middle, the same as you do on the rubber holders. A man identified the pen as a Waterman pen, the mark and the name.

RXQ220. The metal cover is in filagree work and difficult to mark, is it not? A. Not necessarily. Some of it is plain gold, and silver.

161

RXQ221. When they were plain gold would they mark them with the word "Ideal"? A. Sometimes.

RXQ222. You mark all your gold pens "Ideal," don't you? A. Yes, or "Waterman's Ideal."

RXQ223. So that no matter what may be on the holder, the pen always contains your trade-mark "Ideal"? A. Yes.

RXQ224. The Waterman pen is not, generally speaking, a self-filling pen? A. Well, we make both styles. For a great many years it has not been a self-filling pen, that is, that the bulk of our business has been done in.

RXQ225. In the non-self-filling? A. It has been in the non-self-filling.

RXQ226. How long since you began to manufacture a self-

163 filling pen?

Mr. Watson: Objected to as not proper re-cross examination.

A. We made them about ten or eleven years ago.

RXQ227. You made very few of them, didn't you? A. Not extensively.

RXQ228. And that is true today also, is it not? A. We make considerably more today, quite a larger per cent of self-filling pens.

RXQ229. Your self-filling pens are what are called "pump" pens? A. We have what we call a "pump" pen and a "rubber sack" pen.

POOR COPY

RXQ230. Your self-filling pen has some arrangement on the side, has it not, for filling? A. The "rubber sack" pens, you mean. It has a sleeve to make an opening.

RXQ231. On the side? A. On the side of the reservoir.

RXQ232. It is not like the defendant's self-filler? A. Not the operating part of it. They both have similar rubber sacks.

RXQ233. Are one per cent of your pens as manufactured today self-filling? A. I should say more.

RXQ234. How much more? A. I should say more than ten per cent.

RXQ235. Very much more than ten per cent?

Mr. Watson: Objected to as entirely immaterial. 164

A. It is hard to determine that without looking it up.

RXQ236. I just ask for your best recollection. Your best recollection is about ten per cent? A. I should say at least ten per cent.

RXQ237. And your principal pen has a joint about under the finger, has it not? A. Yes, the pen that we have been selling mostly in past years.

RXQ238. Do you have any pens with joints up in the middle of the pen? A. No.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ239. Does the plaintiff manufacture pens without any joints? A. Yes. 165

RDQ240. Are those self-filling pens? A. Self-filling and safety pens.

RDQ241. Both kinds? A. Yes.

RDQ242. Have you seen the pens put out on the market by the defendant? A. Yes.

RDQ243. Do any of those have a joint under the finger? A. They have.

Mr. Watson (to defendant's counsel): Do you concede that the pen I show you is among the styles of pen put out by the defendant?

166

Mr. Bacon: Yes.

Mr. Watson: Plaintiff offers the pen in evidence and asks that it be marked Exhibit 10.

Marked Plaintiff's Exhibit No. 10, December 12, 1910. F. M. A., Exr.

RDQ244. Exhibit 10 is a pen that has a joint under the finger, has it not? A. It has.

RDQ245. Do you know what the capital stock of the Aikin-Lambert Company is? A. Yes.

RDQ246. How much? A. I believe it is $250,000.

RDQ247. A corporation under the laws of the State of New

167 York? A. Yes.

RDQ248. Where is the place of business of the Aikin-Lambert Company? A. 19 Maiden Lane, New York City.

RDQ249. What business do they carry on, what kind of business? A. The business of fountain pens, dip pens and holders; making pencils, charms, novelties and similar articles in the gold and silver line.

RDQ250. What kind of pencils do they make and sell? A. Gold and silver cases for pencils; take the wooden pencils with lead in; magic pencils, of various styles and designs.

RDQ251. Most of their pencils are silver and gold? A. Silver and gold.

RDQ252. What is the principal bulk of their business? A.

168 The principal bulk is the pencil department.

RDQ253. Will you look at Exhibits 7 and 10 and compare them so far as the material, finish, &c. are concerned. You might take them to the window? A. Exhibit 10 does not seem to be as carefully made or finished as Exhibit 7, or as highly finished. It also has the appearance of a different grade of stock or rubber in the holder. It has the appearance of rubber which has some foreign mixture in it; while Exhibit 7 is made of the pure rubber and sulphur, free from any foreign mixture. This mixture makes the rubber which is more elastic and more durable, less liable to breakage. Exhibit 7 also has a feature in the feeding device to prevent blotting the pen from the overflow of the

ink, which is not in Exhibit 10. Referring to the workmanship of Exhibit 10, it is very apparent as to the finish of the threads and the joint of the holder.

RDQ254. You find, as I understand, the joint of Exhibit 10 inferior to the joint in Exhibit 7? A. Yes, the finishing is rough. The joint binds and does not fit freely.

RDQ255. Which joint is more likely to leak? A. The one that is roughly finished.

RDQ256. Which one is that? A. Exhibit 10.

RE-CROSS EXAMINATION by Mr. Bacon:

170

RXQ257. Outside of what you term "finish" there is no substantial difference in the pens, is there? A. There is a difference in the quality of the rubber.

RXQ258. The gold pen itself is just as good? A. That is possible; the character of the gold and the point.

RXQ259. How much does Exhibit 7 retail for? A. $2.50.

RXQ260. Are you aware that Exhibit 10 retails for $1? A. I am not familiar with that.

RXQ261. It is one of the cheapest grades that are made by the defendant?

Mr. Watson: Counsel for plaintiff objects to the question as not the fact, there is no evidence to show it, and counsel will introduce evidence to show that they retail in this instance for more than that. 171

Mr. Bacon: Counsel for defendant will show that that is the regular price, $1.

RXQ262. Does the Aikin-Lambert Company make all these pencils and novelties which are their specialty, or do they buy them for re-sale? A. They make the greater part of them. They make practically all of them.

RXQ263. These safety pens, how long have you been making them? A. We have been making them for—that is going into it more extensively—the last two or three years.

RXQ264. Before that you did not make hardly any, did you? A. A very small percentage of the business.

172

RXQ265. Is it not true that generally speaking your specialties in high grade goods are not self-filling, but are manufactured with a joint under the finger? A. In the past, but not late years. We are going into the other style of pen more, the safety and the self-filling.

RXQ266. Within the last year or two? A. The last three or four years.

RXQ267. But even now about 90 per cent of your pens are not self-filling and have the joint under the finger? A. No, not 90 per cent. The safety pens have no joint under the finger and we have sold a good many of those in the last few years.

173

RXQ268. In the last two or three? A. In the last two or three years.

RXQ269. What proportion of the pens that you sell and mark "Ideal" are non-self-filling and have the joint under the finger?

> Mr. Watson: Plaintiff again calls the Court's attention to the irrelevant line of testimony that is being sought here, having no connection with the issues in this case and gives notice that he will move to strike it out at the final hearing.

A. Less than half of our output.

RXQ270. How long has that proportion prevailed? A. We are going into the other pens more all the time, that is, the pen without the joint or the self-filling pen.

174

RXQ271. Then up to about three or four years ago substantially all of your pens marked "Ideal" were non-self-filling and had a joint under the finger; is that right? A. Yes, the greater part of them.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ272. Will you compare Exhibit 8 with Exhibit 7 as to the quality of material and finish? A. They are of similar material and finish.

RDQ273. Do you find any difference in them? A. No difference except in the stamping.

RDQ274. As far as the material and finish is concerned? A. In the material and finish they are the same.

RDQ275. Can you tell what grade of rubber those pens are made from? A. Made of the pure rubber and sulphur.

RDQ276. What kind of rubber? A. The finest grade of Para rubber.

RDQ277. Does that make the best material for fountain pens that you know of? A. It does.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ278. Did you ever have anything to do with the manufacture of holders? A. Yes, the supervision of the manufacture. 176

RXQ279. In what way? A. In all changes in the holders, different designs, construction.

RXQ280. You have never had supervision of the actual manufacture of the holders in Connecticut? A. You mean the mixing of the rubber?

RXQ281. Anything to do with the manufacture. They come to you as a completed holder? A. I have charge, I have general supervision of it, in going up and going through the factory and having changes made or whatever we find necessary in connection with the holders.

RXQ282. You have nothing to do with the actual manufacture in the Connecticut factory? A. Not as far as the work of a foreman goes, but the general planning, or what we want and how we want it made, and all that, I do. 177

RXQ283. How often do you visit the Day factory in Connecticut? A. At times I visit it frequently and the superintendent of the factory comes to the city most every week.

RXQ284. How often do you go up there in a year? A. Sometimes several times a year. It is possibly two months since I have been up there. In times past I have been in the habit of going nearly once a month.

RXQ285. Generally speaking your factory in New York receives the completed holder from Connecticut and that holder

178 *William I. Ferris*

has only to be polished and decorated, is that right? A. Yes, chasing and mounting and other fancy coverings which we put on it.

RXQ286. You have nothing to do with the mixture of the rubber? A. Not personally.

RXQ287. Do you know from whom Day buys the rubber? A. They buy it, I understand, from the New York Commercial Company.

RXQ288. This Exhibit No. 8, how much does that retail for? A. $3.50.

179 *RE-DIRECT EXAMINATION by Mr. Watson:*

RDQ289. Is there any difference in the grade of the rubber between the pen that retails for $2.50 and those that retail for a higher price? A. Their grade of rubber is the same.

RDQ290. Do you have charge of the factory of the Aikin-Lambert Company? A. Yes.

RDQ291. Making fountain pens? A. I do.

RDQ292. Do they make the holder complete there? A. They do.

RDQ293. Do you buy the materials for those fountain pens? A. I know it is bought through the American Hard Rubber Company. I know that it is ordered. I do not place the orders personally.

180 RDQ294. Do you know the grade of rubber that is required for the "Waterman's Ideal Fountain Pen"? A. Yes, they require for that the pure vulcanized rubber, the pure Para rubber and sulphur and no mixture in it.

WILLIAM I. FERRIS.

It is stipulated that the exhibits introduced in evidence by the respective parties shall remain in the hands of the counsel presenting the same, to be produced on notice to the other side.

Adjourned to Wednesday, December 14, 1910, at 11 A. M.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

181

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.
} In Equity.

New York, March 6, 1911.

Adjourned to 2 P. M. on account of the engagement of defendant's counsel.

182

2 P. M.

Adjourned on account of the engagement of defendant's counsel, to Tuesday, March 7, 1911, at 11 A. M.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

183

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.
} In Equity.

New York, March 7, 1911.

Met pursuant to notice and by agreement.

Appearances:

Samuel S. Watson, for Plaintiff.
Alexander S. Bacon, for Defendant.

184 Mr. Watson (to defendant's counsel): Will you produce the letters and telegrams which were sent to and received by the defendant from John Saadi of Washington, D. C.

Mr. Bacon: I have them here, the originals and some copies that I have had made, with the exception of one or two short letters which I could not find yesterday, but I will find them. They were dunning letters; that is all they were.

Mr. Watson: Letters produced by defendant's counsel to and from John Saadi, Washington, D. C., regarding Royal Ideal Pens, are introduced in evidence by the complainant and the examiner is asked to mark them Complainant's Exhibit No. 20.

185 The letters are marked Complainant's Exhibit No. 20, March 7, 1911. F. M. A., Exr.

Mr. Watson: These letters are dated and signed as follows:

Dec. 7, 1909, from John Saadi to Mr. Geyer.

Dec. 8, 1909, Modern Pen Company to John Saadi.

Dec. 12, 1909, John Saadi to the Modern Pen Company.

Dec. 30, 1909, John Saadi to the Modern Pen Company.

Dec. 31, 1909, Modern Pen Company to John Saadi.

May 13, 1910, John Saadi to the Modern Pen Company.

186 May 20, 1910, Modern Pen Company to John Saadi.

The letters above referred to marked Exhibit No. 20, are as follows:

Exhibit No. 20. 187

"Dec. 7th, 1909
"602 9th St. N. W.
"Washington, D. C.

"Dear Mr. Geyer:

"The L. E. Waterman & Co. have brought action against me. They want to serve injunction against my selling the Royal Ideal Pen. They served me with lots of paper & they brought out among other things, that I or any of my employees should be restrained from selling Waterman or any name of Waterman with or *without any other* initials.

"My lawyers wants to know the decision of the courts in favor of A. A. Waterman & Co., where was it recorded, if recorded, or if you can send me immediately copy of decision with any other information. We are preparing an answer, why an injunction should *not* be served. This must be answered by Friday at 10 o'clock this week the 10th inst. they worked everything so quick and in a hurry but we are ready for them and we shall win. 188

"Please give me an *early reply to above question* & greatly oblige.

"Yours very truly,

"JOHN SAADI.

"P. S. Just came to my notice a fountain pen with imprint A. A. Waterman & Co., Chicago, is that right?" 189

"Dec. 8, 1909

"Mr. John Saadi,
"602 9th St., N. W.,
"Washington, D. C.

"Dear Sir:

"Your letter of the 7th inst. received, and we note that the L. E. Waterman Co. have brought a suit against you.

190 *Exhibit 20*

"In 1898 before A. A. Waterman had a connection with this Company he allowed the L. E. Waterman Co. to get a judgment against him by default, but the judgment distinctly stated that he had a perfect right to use his name, A. A. Waterman, or Arthur A. Waterman, or A. A. Waterman & Co. or Arthur A. Waterman & Co., which is, as we understand it, common law. In 1905 Mr. Waterman formed a copartnership with Messrs Isaac E. and William L. Chapman, President and Treasurer of the Modern Pen Co., under the firm name of A. A. Waterman & Co., with a provision therein that he could withdraw from the firm at the end of the year, he giving the firm the right to use
191 the name A. A. Waterman & Co. or A. A. Waterman which right still holds good.

"Mr. A. A. Waterman was employed by the L. E. Waterman Co., for a number of years until along about 1895 when he went into business in Boston, Mass., using the name of A. A. Waterman Pen Co. After retiring from the firm of A. A. Waterman & Co. in New York, Mr. Waterman went to Chicago and formed a corporation organized under the laws of Arizona, known as A. A. Waterman & Co., Inc. Within the last year Mr. Waterman has withdrawn from the Chicago Company and is now with the Held Pen Co. of Salt Lake City, Utah.

"We enclose a copy of the decision with the L. E. Waterman Co. got against Mr. A. A. Waterman.

"We trust this covers all the information you require but
192 if there is any more we can give you, let us know and we will be only too glad to do so.

"Yours truly,
"THE MODERN PEN CO.,
"Hobart W. Geyer,
"Ass't Treas."

Exhibit 20

193

"Dec. 12th, 1909
"602 9th St., N. W.,
"Washington, D. C.

"The Modern Pen Co.,
"New York

"Dear Mr. Geyer:

"I thank you for sending me the decision of the court also for your good wishes.

"The case did not come up last Friday. Mr. Watson of N. Y. was on hand also a lawyer, Mr. May of Washington. Simply we were not ready & the Justice postponed the hearing until next 194
Friday, Dec. 17th.

"I have engaged two talented attorneys, a Mr. Hollander & Mr. White, who is Assistant district attorney of Washington. I don't believe the justice will grant injunction & they will or may have to fight the case on its merits.

"Thanking you again for all favors, I beg to remain.

"Yours respectfully,
"JOHN SAADI.

"Frank Waterman is the plaintiff in the case of his Co. & is also in Washington."

195

"Dec. 30th, 1909
"602 9th St., N. W.
"Washington, D. C.

"The Modern Pen Co.,
"New York City

"Gentlemen:

"You may have known by this time that I can no longer have the word Ideal on any fountain pen. The opinion of the Justice was such and my lawyers thought it best to destroy the word &

196 *Exhibit 20*

use any other word in the future. Messrs Hollander & White wrote you on another subject which I believe of greater importance to you. As we are trying to settle with them without further expense & before court decision. They demand that I would not sell fountain pens made by A. A. Waterman & Co. & if they should succeed with me, they will in the future use same tactics with every dealer of Fountain Pens who deals with you. They have the money & a dealers as myself cannot afford to spend few hundreds to fight them.

"Of course I am in the Fountain Pen business to stay, and my adv. of any Fountain Pens makes sale of same; and while
197 they have more money and ready lawyers for that purpose and they can win & dictate I can sell any Fountain Pen by advertising same that they cannot stop me & all their money cannot stop me. I would not sell their Pen if it was given me free to sell. It was only fear of expenses & maybe total loss that made me give in. Also I know if I had the money to fight all of their demand in the courts, they cannot win, but what can I do. I hope you answered my Lawyers letter direct to you, which I have not seen, but was told of its substance.

"Will you please pardon me for taking the liberty in using your name as reference. I will soon add a full line of razors to my stock in Washington and the Law of the District that every dealer in razors should take name, age, color & residence of every person who buys a razor & to report same every month
198 & in order to enforce their law they require a thousand dollar bond from every dealer in razors. I applied to the Fidelity Co. for the bond and had to fill their form. Please pardon me for taking such liberty in using your name, the above explains it.

"I expect to be in New York the latter part of next week & will call & see you.

"Wishing you a very happy New Year,

"Yours respectfully,

"JOHN SAADI."

Exhibit 20 199

"Dec. 31, 1909

"Mr. John Saadi,
"602 9th St., N. W.
"Washington, D. C.

"Dear Sir:

"Your letter of the 30th inst. received, and we also heard from your attorney and are writing him to-day for further particulars. We will undoubtedly authorize him to protect our interests all that he can in the matter but the President of the Company wants more information in regard to it before he will authorize our engaging Mr. Hollander. 200

"We note that you have decided to drop the use of the 'Royal Ideal' as the name of your pen and we presume that you have quite some stock of this imprint left yet. If you wish and will send what stock you have on to us, we will be pleased to remove the imprint and put any new imprint on that you wish, the only expense to you being the cost of the wheel for the new imprint.

"In regard to your referring to us, we will be pleased to recommend you to the bonding company as a good risk. With kindest regards and wishing you the compliments of the season, we remain.

"Yours truly,
"THE MODERN PEN CO.,
"Hobart W. Geyer,
"Ass't Treas." 201

202 *Exhibit 20*

"May 13-10

"Modern Pen Co.,
"New York,

"Please give me credit for
10/12 #20 Self filling
1 8/12 #103 fountain pens.
"Yours respectfully,
"JOHN SAADI.

"I have more A. A. W. gold points & fountain pens which I
203 will return to you. I will soon be in N. Y. & will call on you.
"J. S."

"May 20, 1910

"Mr. John Saadi,
"Washington, D. C.

"Dear Sir:

"Your letter of the 13th instant and pens received, and we have sent you a credit memorandum for same.

"Your bill has been running quite a long time, and we request
204 that you send us a check for either $100.00 or $150.00 on account by return mail.

"As we informed you sometime ago, we started a suit against the L. E. Waterman Co. to restrain them from making use of the injunction which they got by consent restraining the Standard Drug Co. and yourself from selling our goods. This case has not yet been decided but in the mean time the L. E. Waterman Co. started a suit in the United States Circuit Court here against the Modern Pen Company to restrain it from selling goods imprinted A. A. Waterman & Co. On Wednesday of this week, Judge Cox handed down his decision declining their request, and in his opinion he intimated strongly that we were the aggrieved

Exhibit 20 205

parties rather than the L. E. Waterman Co. We hope before long to have the matter closed up satisfactory to ourselves.

"Yours truly,

"THE MODERN PEN COMPANY,

"Hobart W. Geyer,

"Ass't Treasurer."

Mr. Watson: Counsel for complainant has requested counsel for defendant to admit that the advertisement appearing in the Jersey City Journal of December 11, 1909, of Wolfson Bros., of Jersey City, advertising fountain pens was, in part or in whole, paid for by the defendant. 206

Mr. Bacon: We refuse to make any admission but state that the exact fact will be brought out when Mr. Geyer is on the stand, and that he will be produced as a witness and he is the only one who knows all about it.

Mr. Watson: Counsel for complainant asks counsel for defendant if he will admit on the record that Isaac E. Chapman and William L. Chapman, who are now the sole members of the firm of A. A. Waterman & Co., and their friends, are the stockholders of the Modern Pen Company and that the defendant and A. A. Waterman & Co. are substantially the same; that the parties are very nearly the same and that the Modern Pen Company stands in this litigation in the place of the firm of A. A. Waterman & Co. 207

Mr. Bacon: That is substantially true. The firm of A. A. Waterman & Co. is now composed of Messrs. I. E. and William L. Chapman, and the Messrs. Chapman and their friends own a majority of the stock of the Modern Pen Company, which is the sole selling agent of A. A. Waterman & Co.; and Mr. Isaac E. Chapman is President and Mr. William L. Chapman is Secretary of the

208 Modern Pen Company, Mr. Hobart W. Geyer is now Treasurer of the Modern Pen Company and has been for the last four or five months; before which time Mr. William L. Chapman was Treasurer.

Mr. Watson: Is it a fact that Isaac E. Chapman has been President of the Modern Pen Company ever since it was organized?

Mr. Bacon: Yes, that is true.

Mr. Watson: And that William L. Chapman has been its Secretary since it was organized, and Treasurer up to a few months ago?

Mr. Bacon: It is admitted.

Mr. Watson: Counsel for complainant asks counsel
209 for defendant if he will admit that the defendant's so-called "self-filling fountain pen," is made under United States Letters Patent No. 744,642, granted to Harry W. Stone, and dated November 17, 1903, and that these pens are marked with this patent date.

Mr. Bacon: It is admitted that this patent is marked on the pen, but whether or not this is the only patent utilized in the manufacture of the pen counsel does not know.

Mr. Watson: Counsel for plaintiff introduces in evidence United States Patent No. 744,642, granted to Harry W. Stone, November 17, 1903.

Mr. Bacon: Objected to as immaterial.

210 Marked Complainant's Exhibit 22, March 7, 1911, F. M. A., Exr.

Mr. Watson: Counsel for complainant states on the record that Mr. Hobart W. Geyer is present at this hearing conferring with defendant's counsel and that he has made affidavit that he is the manager of the business of the defendant company. This is contained in an affidavit of Mr. Geyer, verified August 10, 1910.

Also in an affidavit verified by Mr. Hobart W. Geyer on April 27, 1910. In the last affidavit referred to Mr. Geyer states that he is the Assistant Treasurer and Man-

ager of the Modern Pen Company, and has been such since about 1908; before which period Mr. C. E. Martling was manager. All matters of business detail are in the hands of the manager, and matters of finance are looked after by Messrs. I. E. & W. L. Chapman, who are the president and treasurer respectively of this defendant. 211

And in an affidavit verified by Mr. Geyer on August 10, 1910, he states that he is now and for about three weeks has been treasurer of the Modern Pen Company; before that time he was assistant treasurer and manager. * * * "Deponent is the manager of A. A. Waterman & Co., and the partners give that business no personal attention."

Counsel for complainant stated before Judge Coxe in open court a few days since that the defendant made no claim to the name Waterman or Waterman's alone in connection with the fountain pen business, or substantially to this effect. In order to save expense and facilitate the closing of the depositions in this case, counsel for complainant now asks counsel for defendant to admit the same on the record. 212

Mr. Bacon: Counsel for complainant denies that he ever made any such statement in fact or in substance and refuses so to admit. Defendant's counsel alleges that the Modern Pen Company nor A. A. Waterman & Co. have ever in any instance used or permitted or recognized the use of the word "Waterman" alone or "Waterman's," but whether or not they are entitled to that use jointly with other persons equally so entitled, is a matter for the Court and not for them to admit. Said company and firm have at all times very carefully instructed all of their agents and representatives of every name and nature whatsoever, to be careful and use the full name of A. A. Waterman & Co. in connection with all their goods, so that their superior goods might not be confused with the inferior goods of the Complainant, and they know of no single instance whatever where these instructions have been violated. 213

214 *William I. Ferris*

WILLIAM I. FERRIS, recalled as a witness for the complainant, being duly sworn, testifies as follows:

Direct-examination by Mr. Watson:

Q285. Has the L. E. Waterman Company received any medals or diplomas for superiority or excellence or merit for fountain pens of its manufacture?

Mr. Bacon: Objected to as immaterial.

A. They have.

Q286. Have you prepared a list of these medals and diplomas
215 which have been awarded to the complainant and its predecessor in business, to which you refer? A. I have. It is as follows:

1883 The Mechanics' Institute, New York; medal of excellence.

1884 The Mechanics' Institute, New York; medal of superiority.

1885 The Mechanics' Institute, New York; special medal.

1886 The Mechanics' Institute, New York; medal of superiority.

1887 The Mechanics' Institute, New York; Medal of superiority.

1888 The Mechanics' Institute, New York; medal of superiority.

1889 The Mechanics' Institute, New York; medal of excel-
216 lence.

1889 Exposition Universelle, Paris; medal and diploma.

1893 World's Columbian Exposition, Chicago; medal and diploma upon the finding of a Board of International Judges, "Award for specific points of excellence which are as follows: 1st, Positive excellence of materials used throughout; 2, Excellent workmanship; 3d, Superior excellence of action of feed; 4th, Writes the moment pen touches paper; 5th, Does not overflow or skip; 6th, Simple in construction; 7th, Very cleanly."

1894 California Mid-Winter International Exposition, San Francisco; medal.

217

1895 Cotton States & International Exposition, Atlanta; medal and diploma.

1897 Tennessee Centennial Exposition, Nashville; medal and diploma.

1898 Trans-Mississippi & International Exposition, Omaha; medal and diploma.

1900 World's International Exposition, Paris; medal and diploma.

1901 Glasgow International Exposition, Glasgow, Scotland; diploma.

1901 Panama-American Exposition, Buffalo, New York; medal and diploma.

1901-2 Inter-State Exposition, Charleston, S. C.; medal and diploma. 218

1903 World's Exposition, Osaka, Japan; diploma.

1904 Louisiana Purchase Exposition, St. Louis; medal and diploma.

1905 Lewis & Clark Exposition, Portland, Oregon; medal and diploma.

1906 International Exposition, Milan, Italy, medal and diploma.

1906 Dominion Exposition, Halifax, Canada; medal.

1907 Jamestown Tercentennial Exposition, Jamestown, Virginia; medal and diploma.

1907 World's Exposition, Paris; diploma.

1910 Cotton States' Exposition, Cincinnati, Ohio; Highest award for fountain pens to Waterman's Ideal Fountain pens. 219

1910 International Exposition, Brussels, Belgium. Plaintiff has been advised that highest award has been made to Waterman's Ideal Fountain pens, official notice not yet received, the exposition is still in progress.

Wherever exhibited Waterman's Ideal Fountain Pens have always received the highest award for fountain pens.

Q287. Is this list correct in this book? A. Yes.

Q288. Except the 1910 Cotton States' Exposition held at Cincinnati, have all these medals which you have listed here been

220 *William I. Ferris*

received by the plaintiff company? A. Yes, except the medal awarded at the International Exposition at Milan in 1906, a diploma has been received; and except the medal awarded at the Dominion Exposition at Halifax in 1906; and the medal awarded at the exposition recently held in Cincinnati in the year 1910; and also except the medal awarded at the International Exposition in Brussels in 1910.

Q289. I understand the company has been advised of the award of the last two awards; is that a fact? A. Yes.

Q290. Will you produce these medals and diplomas that you have listed? A. (The witness produces a box of medals and
221 diplomas.

Mr. Watson: Counsel for complainant presents for the information of the Court some representations of the backs and fronts of a great many of these medals, and asks that these representations be placed in evidence and marked Complainant's Exhibit 21.

Mr. Bacon: Objected to as immaterial and irrelevant; no objection to the fact that they are copies of the originals.

The representations referred to are marked Complainant's Exhibit 21, March 7, 1911. F. M. A., Exr.

Q291. Does the name Waterman Pen or Waterman's Ideal Fountain Pen, indicate or designate any special construction or
222 structure? A. No; it indicates origin; it indicates pens of the plaintiff's manufacture and has no reference to the style or design or construction of the holder of the fountain pens.

Q292. Has this always been the fact since you have been connected with the business? A. It has.

Q293. Is it a fact that the plaintiff has manufactured many different designs and styles of fountain pens? A. It is.

Q294. When I refer to designs and styles I refer to structure, appearance; is your answer the same? A. Yes.

Q295. Has the name of Waterman's Ideal Fountain Pen, or Waterman's Pen at any time indicated any special patented structure? A. No.

223

Q296. Since you have been connected with the business what was the date of the earliest patent which the plaintiff or its predecessors ever used, to your knowledge? A. February 12, 1884.

Q297. And one of the medals which you have produced of Waterman's Ideal Fountain Pen was awarded and bears date in 1883; is that a fact? A. Yes.

Q298. During your connection with the plaintiff's business, has the plaintiff or its predecessors, or both, placed these names and trade-marks in suit on various styles and designs of fountain pen holders? A. They have.

Q299. And also on fountain pens covered by various patents? A. They have. A great many of these names have been on holders that were covered by one patent, and at the same time they are used on other holders made or covered under another patent, sometimes both, but in no case do these trade-marks refer to designs of holders of any patent that covers them.

224

Q300. Has the plaintiff company advertised its goods under the names and trade-marks in suit? A. It has.

Q301. Can you state generally to what extent and in what way? A. From the first it has advertised these trade names, and the advertising has gradually increased from time to time; it is now very extensive. This advertising is done in magazines, papers and in various literature sent out to the dealers; and the dealers themselves advertise the pens. This advertising has become more extensive the last four or five years, and runs in the neighborhood of $200,000 a year. The pens are also advertised in foreign countries.

225

Q302. Can you approximate in a general way how much has been expended annually in the last four or five years in advertising and bringing to the attention of the trade and public the plaintiff's goods under the trade names and trade-marks in suit? A. There has been expended for this advertising in this country alone in the neighborhood of $200,000 a year.

Q303. In that advertising which you have referred to as made by dealers are the trade-marks or trade names in suit

226 *William I. Ferris*

included in those advertisements which you refer to? A. Yes.

Q304. And does all the advertising you refer to and the publicity that you refer to concern the advertising and popularizing of the complainant's goods under the name of Waterman's and Waterman's Ideal Fountain Pen? A. It does.

Q305. And the trade names and trade-marks in suit? A. It does.

CROSS-EXAMINATION by Mr. Bacon:

XQ306. Before five years ago about how much did they spend
227 per annum in advertising? A. In the neighborhood of $200,000 a year.

XQ307. Just the same as during the last period of five years? A. There may have been some increase. That is an approximate figure. There are a great many other things that are in advertising that have not been included in that, in the way of supplies and all such materials.

XQ307. Have you materially increased your advertising in the last ten years? A. Yes.

XQ308. Have you materially increased your advertising in the last five years? A. Not in the proportion of the first five years of ten years.

XQ309. Before the last ten years you did not advertise so much? A. We advertised from the very first.

228 XQ310. My question was "so much"? A. Not as much as in the last five years.

XQ311. Before ten years ago how much did you spend a year? A. I am not familiar with the amount but the advertising graduated or increased with the business, in the early years.

XQ312. Did you spend $100,000 a year before ten years ago? A. I could not say as to the exact amount without looking it up.

XQ313. While you have increased this advertising so largely during the last ten years you know all of this time that the vari-

229

ous firms of A. A. Waterman & Co. were also advertising their goods under their firm name, did you not? A. We saw some advertisements of theirs.

XQ314. And you knew that all this time they claimed the right to use the words "A. A. Waterman & Co."? A. I don't know as to that; I have no knowledge of that.

XQ315. You knew that they were using it openly and above board? A. Yes, to much confusion and trouble on our part.

XQ316. And you never made any complaint about it until 1909? A. Whatever the date is when the first action was taken; 1898 or 1897, the first action was taken.

XQ317. After the decree of September 3, 1908, and up to the year 1909, you never made any complaint against any firm of A. A. Waterman & Co., advertising and selling their goods under that trade name? A. I don't know as to that. There was no legal action ever taken that I was familiar with.

230

XQ318. And you never heard of any other action? A. I don't recall any.

XQ319. And all this time you knew that the word "Waterman" being a family name could not legally be made a trade-mark, did you not?

Mr. Watson: Objected to.

A. I don't know as to that.

XQ320. And your counsel never told you that? A. That it could not be used as a trade-mark?

231

XQ321. Yes. A. I don't remember of any such information.

XQ322. Are you familiar with the recent litigation in Italy? A. I know there has been litigation, but I am not familiar with the details of it.

XQ323. Do you know that the L. E. Waterman Company as complainant, over there in an action brought in Milan, Italy, have alleged that there is no such firm as A. A. Waterman & Co.? A. No, I have no such knowledge.

XQ324. Has Mr. Frank Waterman ever told you so? A. No, not to my knowledge.

232 *William I. Ferris*

XQ325. The L. E. Waterman Company manufacture all styles and designs of pens, do they not? A. A great many.

XQ326. But you do not claim that any of those styles or designs are exclusive, that they are not manufactured also by many other fountain pen manufacturers? A. We do not claim all of them are exclusive. A great many of them were at one time, but other people have copied them.

XQ327. They had a perfect right to copy them? A. There is no protection; there is no reason why they could not.

XQ328. You do not claim that anybody in looking at any of the L. E. Waterman pens could tell that it was an L. E. Water-
233 man pen unless he found the name on it; that is, that it could not be distinguished by its appearance? A. It might if they were familiar with the pen, familiar with the manufacturing, the workmanship or the quality of the rubber, &c.

XQ329. Nobody but an expert then could do it? A. Not so apt to.

XQ330. You do not claim that the trade name or trade-mark "Waterman" or "Waterman's" or "Ideal," refer to any particular design or structure? A. No, sir.

XQ331. That it is applied to pens that have the same design and the same structure as many other manufacturers? A. They may.

XQ332. Your trade-mark does not refer to any particular patent, nor any particular design, nor any particular structure;
234 is that right? A. Yes.

XQ333. It can be applied to anything that is manufactured or sold by the L. E. Waterman Company? A. Yes.

XQ334. No matter what, provided it is in connection with fountain pens? A. Yes, as I understand it.

XQ335. In other words, there is no particular difference in appearance between the pens manufactured and sold by your company and those of many other companies? A. Not to an inexperienced person.

XQ336. A man would have to be a manufacturer and an expert to detect the difference? A. Unless he might distinguish

235

it from using the pen, from experience and being familiar with it.

XQ337. But the general public would not know the difference except for the name? A. They would not be apt to.

XQ338. Is it not a fact that your Canadian company makes pens, fountain pens, imprinted with the names of other people who want to represent them as their own make? A. Not Waterman's pens.

XQ339. Then they will make any pen and put any name on which the vendor desires, will they not? A. No, sir.

XQ340. They make pens and put other names on them than Waterman's pens? A. But no pens that use the patent. Pens of the higher grade are imprinted with the Waterman trade- 236
mark. All the pens that are imprinted with other names are a cheaper class of pens.

XQ341. If a jobber wanted a certain number of pens manufactured by your Canadian company you would put on them any name that he might desire, would you not? A. No pen that we imprint with the Waterman name.

XQ342. If he sends you his private design you would manufacture it and put any name on it that he wants? A. Only on the cheaper pens, not of the Waterman, or that had the Waterman imprint.

XQ343. Could he not sell them at any price he pleased? A. You refer to these cheaper pens?

XQ344. I refer to the pens manufactured by the Waterman 237
Company that are sold to other people, bearing the names that other people want put on them? A. They are at liberty to sell them for what they please.

XQ345. And you make such pens upon request? A. In a great many cases.

XQ346. Is it not a fact that you will sell certain grades of pens with another imprint, which grades are the same as those that bear the Waterman imprint? A. No.

XQ347. Do you not have cheaper grades of goods bearing the Waterman imprint? A. Yes.

238

XQ348. What is the cheapest retail price of any pen bearing the Waterman imprint? A. $2.50.

XQ349. Do you mean to say you never make pens with any other imprint that are sold at retail for $2.50? A. Not to my knowledge.

XQ350. It may be so? A. I think not.

XQ351. Referring to the list of medals received by the L. E. Waterman Company, offered in evidence today, were you with the plaintiff company in 1883? A. No, sir, 1885; that is the plaintiff's predecessor, in 1885.

XQ352. It was the same company, was it not? A. No, the company was not organized until 1887.

239

XQ353. Do you know what character of pen was exhibited in New York in 1885, which received the American Institute medal? A. The pens of the same grade and material which are now made. The rubber work was made in the same factory that the pens now come from.

XQ354. Then the L. E. Waterman Company did not manufacture the penholders that received the Mechanics Institute medal in 1885? A. Well, as explained in my earlier testimony, the holders are made at Seymour, Connecticut. We do work on them here, assembling them, putting them together and chasing, and other work which we consider manufacturing.

XQ355. Did, in 1885, the L. E. Waterman Company manufacture the holders that received the medal at the Mechanics'

240

Institute Fair? A. Yes, as we understand it.

XQ356. Are all those penholders chased? A. No, not all.

XQ357. Then some of them are just as they come from the Connecticut factory, are they not? A. Yes.

XQ358. And in 1885 the Connecticut factory manufactured for anybody that wanted penholders? A. They manufactured for various people.

XQ359. A good many firms? A. I don't know how many.

XQ360. Are you willing to swear that in 1885 the L. E. Waterman firm manufactured the pen points that got this medal? A. No, but we adjusted and assembled them to the holders.

XQ361. Then other people manufactured pen points and other people manufactured holders and you simply put them together or adjusted them, as you have called it? A. Yes. All those holders and pens had the trade names on them.

XQ362. But some of those pen points may have been manufactured by one party and some by another? A. That is possible.

XQ363. Is what you have said true about the medals—the pens that received medals in 1886 at the Mechanics' Institute Fair? A. The same conditions prevailed for several years until such time as we did all the manufacturing.

XQ364. When was that? A. The manufacturing of the 242
gold pens, about ten or eleven years ago.

XQ365. Then from 1883 up to say 1900 all of the pens that received these various medals had the holders manufactured in Connecticut and the pen points manufactured by various manufacturers from whom you bought? A. Yes.

XQ366. And you simply assembled the parts? A. We did the other work in connection with the assembling and adjusting the pens, &c.

XQ367. And the assembling consisted in putting in the pen points into the holder? A. Adjusting the nib, the set, refinishing the point, or touching it up, as we call it, in a great many cases, all of which involves quite an amount of labor.

XQ368. How often would you readjust the point of a pen— 243
once in a hundred times? A. Every pen receives more or less adjustment.

XQ369. Do you mean by adjustment, change? A. Adjusting the set of the nib and fitting, and shaping the feed to the pen after it is inserted in the holder.

XQ370. You do not mean to say when you bought pen points you had to change the points, as a rule? A. Yes, in almost every case, say 999 out of 1,000; practically every one.

XQ371. How did you change the pen points? A. By altering the set of the nib.

XQ372. What metal is on the extreme point of the nib? A. Iridium.

244 *William I. Ferris*

XQ373. Do you mean to say you took the iridium off and put it on again? A. No.

XQ374. What did you do? A. Adjust the tension of the nib, the pressure of the two nibs coming together.

XQ375. How long would it take a man to do that? A. It would depend on the condition of the set. In some instances several seconds, or it might take half a minute or a minute. Sometimes after it is inserted into the holder it is necessary to take it out several times.

XQ376. From 1900 down to this date are you willing to swear that any particular pen exhibited at any particular ex-
245 hibition was manufactured by the L. E. Waterman Company? A. As I have previously explained to you.

XQ377. In each instance the penholder was manufactured by somebody else; and are you able to swear that in any particular instance a pen point was manufactured by you? A. Yes.

XQ378. Which one? A. In the French Exhibition.

XQ379. Of what year—1907 and 1900? A. 1907.

XQ380. Were those pens exhibited in Paris in 1907 manufactured by the Canadian factory? A. No, sir.

XQ381. Manufactured in New York? A. Yes.

XQ382. Do you know of your own knowledge that the pen points there exhibited were manufactured by your own firm? A. It is my knowledge that they were made up specially for that exhibit, certain pens.

246 XQ383. Where was the factory in which you made them? A. At Rose and Duane Streets.

XQ384. Does the L. E. Waterman Company own that factory? A. Yes.

XQ385. It is run in their name? A. Yes.

XQ386. And yet, notwithstanding the fact that you have a factory there you buy pen points from other people? A. We have in the past.

XQ387. And up to within a very short time? A. Gradually less in the last years.

XQ388. But you still buy from some other parties? A. Very few, the cheaper pens.

XQ389. But they bear the name of L. E. Waterman? A. Some of them.

XQ390. And "Ideal"? A. Some of them.

XQ391. What do you call cheaper pens? A. A pen that is without any name on; it is merely stamped 14 karat.

XQ392. And it is put in a holder marked "Ideal"? A. No.

XQ393. Or L. E. Waterman? A. No.

XQ394. Do you mean to say you do not buy any pen points that are put in Ideal pens? A. We buy a few, or have of later years, very few.

XQ395. But you have done that even up to the present time? A. Up to the last year or two.

248

XQ396. Have you not got pens on hand today, pen points, by other people that are sold for Ideal pens? A. That is possible. There may be some running back several years that have not worked out of the stock.

XQ397. Then it is not true that substantially all of the pens that were put on exhibtion between 1883 and 1910, and for which medals were received by the L. E. Waterman Company were manufactured in whole or in part by other people than the plaintiff? A. A great many of the gold nibs may have been made by others, but I could not swear to it, because the greater part of the pens were made by us, and it is fair to presume that they were in those pens that were exhibited.

XQ398. When you made these pens for exhibit you made special pens different from the ordinary stock in trade? A. No, only that French pen, and it was necessary to have an 18 karat pen go into France. That is why I recollect that particular pen. The other pens that go into exhibits are pens that go through the ordinary stock.

249

XQ399. And the pen points may be manufactured by anybody besides yourself? A. It is possible.

XQ400. You do not advertise to the world that you buy any part of the pens that are sold under the name of "Ideal"? A. That is not necessary. Lots of manufacturers do not advertise to the world where they get some of their parts.

XQ401. Then you make no claim that the word "Waterman" or "Waterman's," or "Ideal," or any combination of those words refer to anything except a fountain pen or the parts thereof that are sold by the L. E. Waterman Company? A. Yes, that is the claim we make, that they are pens of the plaintiff's manufacture.

XQ402. You use those words on pens that are not manufactured by the plaintiff, do you not? A. These trade names?

XQ403. Yes, and have done so since 1883? A. No, sir.

XQ404. You do not claim that since 1883 or 1887 when the new corporation was formed, that all the pens bearing the words
251 "Waterman" or "Ideal" were manufactured by the L. E. Waterman Company? A. I claim that they were as I have explained, the same way as automobile manufacturers buy or get a great part of their supplies one way or another which make up the complete article.

XQ405. You do not claim that these so-called trade-marks were placed upon goods all of the parts of which, both the holders and the pen points were manufactured by the plaintiff company? A. No.

XQ406. But you claim that the manufacture of a fountain pen consists in the assembling of the parts? A. And proper supervision of the pen to make a good working instrument.

XQ407. When you buy pen points from any other party you do not claim that you supervise the manufacture of those pen
252 points? A. Only to have them meet our requirements.

XQ408. That is you examine them after you get them? A. Yes, and instruct them how to make them.

XQ409. By instructing them you mean giving them a description of the style of pen that you want? A. A sample and what is necessary for our requirement and then follow them up and see that we get it, which, in a great many cases necessitates going to their plant or factory and going over the matter with them to get it straightened out and get them as they should be.

XQ410. Then when they get one pen right they make them all like that pen? A. As far as possible, but it requires constant following up.

XQ411. You do not claim that the self-filling pens manufactured by the A. A. Waterman Company are like the pens manufactured by the L. E. Waterman Company; no person would mistake one for the other? A. They have the rubber sack, as I remember the pen; the same method of filling. It may be a different construction in detail or mode of operating.

XQ412. They are manufactured under an entirely different patent from your patents? A. I believe so.

XQ413. Nobody ever would mistake the one for the other; 254
the mechanical construction is wholly different? A. You mean irrespective of the name stamped on it?

XQ414. Certainly? A. As I remember that pen it operates from the end. Ours operates from the side, in the filling.

XQ415. And your joint pens have the joint under the finger, do they not? A. At the end where the pen is.

XQ416. They have a middle joint pen, where the joint is away up in the middle of the pen, do they not? A. I believe they do have a similar pen.

XQ417. And they have such a one now as their specialty? A. I don't know that they do.

XQ418. Don't you know that their specialty is a self-filling pen and a middle joint pen, so-called? A. I am not familiar with that. 255

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ419. As I understand your testimony all of the fountain pens made by the plaintiff for other people which are imprinted with their name or trade-mark, or what-not, do not bear the name of "Waterman" or "Ideal"? A. They do not.

RDQ420. And that has always been the fact; you never have made or sold pens to other people bearing their name which also bore the trade-marks which are now in suit? A. Except in

256 *William I. Ferris*

cases where there were complimentary pens for dinners, or some such distribution—banquets.

RDQ421. Since you have been connected with the plaintiff's business, is it not a fact that the manufacture of the holders and parts has been directly supervised by the plaintiff's representatives? A. That is the case.

RDQ422. That applies to the rubber parts and the gold pen points? A. Yes.

RDQ423. And is it not a fact that the rubber parts have been made in all cases under the instruction and supervision of some representative of the plaintiff company or its predecessor? A. They have.

257

RDQ424. Is it not a fact that at all times since you have been connected with the business, when pen points have been made for the plaintiff, or its predecessors by outside people, that the manufacture of these pen points is supervised and explicit instructions given as to the manner of manufacture and design and quality of the materials from the beginning of its manufacture? A. They have.

RDQ425. And that is the case today where any of the parts are made outside of the factories directly controlled by the plaintiff company? A. It is.

RE-CROSS EXAMINATION by Mr. Bacon:

258

RXQ426. You are the one that has done the supervising of the manufacture of the rubber holders, are you not? A. Yes.

RXQ427. And you go up to the Connecticut factory about once a month? A. I do at times, and oftener than that in years gone by when it required attention oftener.

RDQ428. And you never have been an expert manufacturer of rubber? A. I am familiar with all the operations and the working it up from the raw gum.

RXQ429. You have never manufactured rubber at all? A. I am familiar with it.

RXQ430. You have never been engaged in the manufacture of rubber, have you? A. Not personally.

259

RXQ431. You simply go to the factory and look around and tell them the styles that you want and make changes and suggestions in the styles? A. Yes, and in the method of making them, in the operation, suggesting new machinery and new methods of making the holders.

RXQ432. You do not assume that you know more about the actual manufacture of rubber than those who are engaged in it, do you? A. No.

RXQ433. And you would not call yourself an expert rubber manufacturer? A. I think I would.

RXQ434. And yet you never manufactured a pound? A. Not practically.

260

RXQ435. And you never manufactured a machine that manufactured rubber? A. No.

RXQ436. Never have designed one? A. No, but I have made suggestion that machines were developed from, in the method of handling rubber, working it up.

RXQ437. What are the constituent elements of the rubber found in the rubber holders of such pens? A. Para rubber, pure rubber worked up from the gum, two-thirds rubber and one-third sulphur.

RXQ438. That is all there is to the manufacture? A. That is all the ingredients in the rubber.

RXQ438a. How is it mixed? A. The first operation, the rubber is torn, the biscuits are torn to pieces, going over a cylinder wheel with teeth on it; at the same time a stream of running 261
water washing it. After it is torn into sheets and all pulled to pieces it is hung up to dry. After it is dried it is put in an artificial dryer or dried in the open for a week or two weeks until it is in a certain condition. Then it is put through the rolls again, flat rolls that are heated and rolled down to a certain thinness and then sulphur is mixed with it. It is put through the rolls many times. After it is sheeted down and mixed with the sulphur it is laid out on a hot table where it is cut into small pieces and wrapped around a metal arbor from which stage it goes into a vulcanizer, packed in large metal cases and covered with soapstone, one layer on top of another. These are then

262 *William I. Ferris*

put into heaters and the heat is gradually turned on for twelve hours running up to 300 degrees and back again; gradually cooled off. Then the holder taken out of the oven and the metal arbors are drawn out on a draw bench. They are removed on the draw bench. Then the holders are ready for the lathe work. They are roughed down first, the barrels and caps. Then the necks are made and inserted into the barrels and they are shaped on the outside. The necks are reamed to take the feeds. The caps are turned down similar to the barrels and finished. Then they go through a polisher, one or two polishing operations, according to the finish. After that they are wiped and
263 cleaned and stamped with the name and inspected. That is the general routine.

RXQ439. And that is all done in Connecticut? A. Yes.

RXQ440. Then when the holders are brought down to New York and you put in the gold pen points you have a pen that may be ready for the market? A. Yes, after the assembling and labeling and some attention to the vent holes, opening or closing them as the case may be.

RXQ441. Have you ever personally manufactured the pen points? A. Yes.

RXQ442. Where? A. At my own home.

RXQ443. When? A. In 1897.

RXQ444. How many did you make there? A. Only a few.

RXQ445. How many? A. In the neighborhood of half a
264 dozen.

RXQ446. Did you have machinery in your own home? A. Yes.

RXQ447. And took machines there for the purpose of manufacturing these half dozen? A. I had them made, the machines, experimental machines.

RXQ448. When you bought pen points from Mabie Todd did you go to their factory and tell them how to make them? A. Yes.

RXQ449. Is that true of all the other people from whom you get pens? A. Yes.

RXQ450. Was that true of A. A. Waterman & Co. from whom you bought pens? A. I never bought any of them.

RXQ451. Didn't you give an order personally? A. I did to Mr. Chapman, but not for L. E. Waterman Co.

RXQ452. You bought them for the Aikin & Lambert Company? A. Yes.

RXQ453. And you did not go to the defendant, the A. A. Waterman & Company to tell them how to make those pens, did you? A. No, sir.

RXQ454. You simply gave them an order for so many pens at such a price? A. That was one small lot. I will say that those particular pens had soft points on them.

266

RXQ455. The same as the sample? A. The sample was hard.

RXQ456. Are you sure? A. I examined it.

RXQ457. What do you mean by a hard point? A. A point sufficiently hard that it will not rub readily on the oil stone.

RXQ458. Did they have iridium on the point? A. A certain grade of iridium.

RXQ459. And iridium is very hard? A. Certain grades of it.

RXQ460. These were cheap pens, were they, that you ordered in this lot? A. The pens, as I recollect, were simply stamped 14 karat, small size.

RXQ461. How much did you pay for them apiece? A. I don't remember.

RXQ462. About how much?

267

Mr. Watson: Complainant's counsel objects to all this detail matter that has no connection with the issue in the case, and especially to the matter inquired about which is within the knowledge of the defendant.

RXQ463. I suppose you know as well as the defendant?

Mr. Watson: The same objection.

A. I don't recollect; there were a great many of those transactions all the time; and this was two or three years back.

268 *William I. Ferris*

RXQ463a. And you accepted them all right? A. I did, under the circumstances.

RXQ464. And paid for them? A. Yes.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ465. Were any of these pens which were obtained from A. A. Waterman & Co. or the Modern Pen Company used by the plaintiff? A. No.

RDQ466. Were any of these pens put in holders bearing the name of Waterman? A. No.

269 RDQ467. Or Ideal? A. No.

RE-CROSS-EXAMINATION by Mr. Bacon:

RXQ468. Do you know whose check paid for these? A. My check.

RXQ469. Your personal check? A. Yes.

RXQ470. Are you in the habit of buying Aikin, Lambert's goods with your personal check? A. No.

RXQ471. That was an isolated instance? A. Yes.

RXQ472. Did you ever do it before? A. I don't recollect of doing it before.

RXQ473. Do you pay for L. E. Waterman's goods with your personal check? A. No, sir, not as a rule.

270 RXQ474. Do you ever? A. I don't recollect that I ever have.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ475. How long have you been supervising the manufacture of the goods put out by the plaintiff company, or its predecessor? A. I took charge of that two or three years after my connection with the business.

RDQ476. And continued it ever since? A. Ever since.

RDQ477. During all of this period you have personally supervised the manufacture of these parts and these finished goods

271

put out by the plaintiff which bore their trade-marks and trade names in suit? A. I have.

RE-CROSS-EXAMINATION by Mr. Bacon:

RXQ478. You do not wish the Court to understand that you have even seen with your own eyes one out of one thousand of all the pens that have been sold by L. E. Waterman in the last ten years? A. I do.

RXQ479. Do you mean to say you have handled them all? A. I have handled them every day.

RXQ480. Do you mean to say you have handled the entire product? A. Not every one, not individual pens, but I know what is going on.

272

RXQ481. You don't look at each pen? A. No, but I see the pens from every lot that goes through, or where there is any change.

RXQ482. How many in a lot that go through? A. There are lots going through all the time, but any changes, any special lots going along, I am always in touch with them.

RXQ483. Then you do not mean to say you give each pen your individual attention? A. Not every individual pen, but the pens in general I am familiar with.

RXQ484. That is true of lots of clerks in your place, is it not, that they are familiar, generally speaking, with all the pens? A. Not to the extent I am. They are not interested particularly in the manufacture or the condition of the pens. They handle them more to attend to the shipping.

273

RXQ485. How many did you buy from A. A. Waterman & Co., how many pen points?

Mr. Watson: The same objection.

A. I am not sure as to the amount. I think it was less than a thousand.

RXQ486. How many of those thousand did you actually handle yourself?

274 Mr. Watson: That is objected to as it is shown by the testimony of this witness that those were not handled or bought for the plaintiff.

RXQ487. How many of them did you personally handle? A. I looked at enough to familiarize myself with the condition of it.

RXQ488. A half a dozen? A. I should say several dozen.

RXQ489. Out of a thousand? A. Taking them out of the different parts of the lot to get a fair sample.

WILLIAM I. FERRIS.

Adjourned to Wednesday, March 8, 1911, at 2 P. M.

275

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY, Plaintiff,
against
MODERN PEN COMPANY, Defendant.
} In Equity.

276 Testimony taken, *de bene esse,* pursuant to notice hereto annexed, before Robert M. Hopkins, Clerk of the United States District Court for the Western District of Washington, Northern Division, at his office in the City of Seattle, State of Washington, commencing Wednesday, September 14th, 1910, at 10 o'clock A. M.

Present:

Walter B. Raymond, for Plaintiff.
Ralph W. Emmons, for Defendant.

ARTHUR A. WATERMAN, a witness called on behalf of the plaintiff, of full age, first being duly sworn, deposes as follows:

Q1. Please state your name, age, place of residence and occupation? A. Arthur A. Waterman; age 51; reside in Minneapolis, Minnesota. Occupation, fountain pen salesman.

Q. Are you here under subpoena? A. Yes, sir.

Q3. What time do you expect to return to Minneapolis? A. The earliest I can get there is the 25th of November, may be later.

Q4. Are you the Arthur A. Waterman formerly a member of the firm of A. A. Waterman & Company, of which firm 278
Isaac E. Chapman and William L. Chapman are the other members? A. I am.

Q5. When did you first enter into partnership in the fountain pen business? A. I entered into partnership with E. L. Gibson in 1897.

Q6. Under what name did you do business? A. A. A. Waterman Pen Company.

Q7. Was your right to do business under that name questioned? A. Yes, sir.

Q8. By whom and with what result? A. We were sued by the L. E. Waterman Company, and there was an injunction issued—judgment obtained. The chief effect of that was that we must not use a corporate style in our business, we must use a 279
firm name.

Q9. When was that decree entered? A. Sometime in September, 1898.

Q10. Under what style did you continue the business? A. As A. A. Waterman & Company.

Q11. Was E. L. Gibson still your partner? A. For a short time.

Q12. What happened in February, 1899? A. Gibson and I dissolved partnership, by mutual consent.

Q13. Did you then continue doing business? A. Yes, I did business for a time as A. A. Waterman, alone.

Q14. And how did you mark your pens? A. A. A. Waterman, maker, Boston.

Q15. You had no partner? A. I had no partner.

Q16. There was no firm of A. A. Waterman & Company in existence? A. Not for that short interval.

Q17. In the latter part of 1900, what did you do in reference to forming a partnership? A. I dissolved the existing partnership with Edsen E. Dewey, and negotiated with William G. Frazer, of New York, for a partnership.

Q18. And did you make any contract with Frazer? A. Yes, sir. I cannot remember whether that month or the next month,
281 I made a contract with William G. Frazer and Hobart W. Geyer. The papers were signed January, 1901.

Q19. Now you may state the arrangement which you entered into at that time concerning the making and marking of pens? A. The pens were made under the firm name and date of patent. They were marked A. A. Waterman & Company, New York.

Q20. Who was to manufacture the product? A. We hired Frazer & Geyer Company to manufacture the parts. Frazer & Geyer Company was a corporation.

Q21. How long was the partnership which you formed to continue? A. I think it was to continue ten years.

Q22. Was there anything said about making the term of the partnership ten years? A. Yes, sir. I think it was to be 10 years at first. We had had the partnership extended once or
282 twice. Finally it was extended to forty years under certain conditions.

Q23. Was there anything said between you and Mr. Frazer and Mr. Geyer, as to the reason for making the partnership for such a long term? A. Well, they regarded the connection with me as being most advantageous, and they wished to increase their capital, and so felt that a long term would be much better as an asset than anything uncertain, not bearing my name.

Q24. Did you have any interest in the corporation of Frazer & Geyer Company? A. No.

Q25. To what did you look for your profits? A. To A. A. Waterman & Company.

Q26. Solely to the copartnership? A. Solely to the copartnership.

Q27. Now, what were you to receive under that? A. I had a salary and a royalty—a royalty so-called. So much per pen that bore my name.

Q28. At that time did you know one Isaac E. Chapman and one William L. Chapman who became interested in the company? A. You mean the Frazer & Geyer Company?

Q29. Yes, sir. A. No, I did not know them when they first made investments but I think Isaac Chapman came in a short time before William Chapman, by buying some of the Frazer & Geyer Company stock. All I know was from remarks of Frazer 284
dropped from time to time.

Q30. In the fall of 1901, did you have any negotiations with the Chapmans? A. Oh, yes, sir.

Q31. Will you state what these negotiations were. What was said by the Chapmans and what you said? A. Well, that is a long story. I first got a number of messages on my western trip from Frazer, saying that Chapman was not only interested, but was likely to become much more interested, and furnish large capital. But he conditioned his going in further upon getting a modification of the partnership by which they would tie me up for a longer time.

Q32. You mean by tie you up, you or your name? A. I suppose the chief consideration was the name, because they feared
that I might engage in business at the end of the ten years 285
that was already provided for, and they could not have as much manufacturing, in that case. I think Chapman made a very strong point that I must become interested in the company, in the corporation and not in the firm. He made the plea that I was not taking any chances; I was getting a dead sure thing and the others were taking chances, and that I must merge all my interest in the firm into the corporation.

Q33. Did you return to New York and have any conferences with them? A. Yes, I returned early in December and had a number of days of interviews and arguments. Got my lawyer from Boston and went over the whole ground carefully.

286 *Arthur A. Waterman*

Q34. Now what contracts were entered into after these conferences? A. Well, for one thing, the partnership was extended for a long term. The firm—I should say the three partners —made over to the Frazer & Geyer Company all their interests in the partnership. I think Frazer and Geyer individually had made over before that, but I had not. And I turned over my profits, my royalties, and arranged with the Frazer & Geyer Company to take a block of stock, and to work for them as well as for A. A. Waterman & Company—put all the interests together. But they held the stock to secure my staying with them for a number of years—I have forgotten how long—before
287 I could get that stock; they put it in a trustee's hands.

Q35. Did you have a conversation with the Chapmans as to putting the stock into the hands of a trustee? A. Yes. Asa Spear was their attorney; he was to hold the stock.

Q36. Was there anything said as to the reason that stock was to be put into the hands of a trustee? A. Well, it was due to the same fear they had expressed before, that I might go out of business, and they wanted to make the loss as much as possible if I did go out and forfeit my stock.

Q37. Who took part in these negotiations? A. I. E. Chapman was the chief one, but he was assisted by William L. Chapman, that is his brother, and by Mr. Frazer.

Q38. The Chapmans took the initiative in these negotiations? A. Yes, necessarily so, on account of the question of the money
288 that they were to try to get.

Q39. Did the Chapmans insist on this forfeiture provision? A. Yes, sir.

Q40. Now what did you have to do with the management of this company? A. You mean the firm?

Q41. The firm. A. They gave me stock in the corporation, but I may say the firm gave me a complimentary standing. I was to be considered; I was to be consulted before they changed the form or style of the goods.

Q42. Did you have anything to do with the business management? A. No, sir. That was absolutely excepted. William G. Frazer was the manager of the firm, absolutely.

Q43. What part did the Chapmans have under this new arrangement? A. Well, they figure, of course all together through the corporation, as the Frazer & Geyer Company was a sort of a holding company.

Q44. Were you an officer of that company, the Frazer & Geyer Company? A. I cannot remember whether I was made a director or not. Of course I was a stockholder. I became a director later, but I cannot remember the date.

Q45. Did you hold any of the principal offices of the company? A. Of the corporation?

Q46. Yes. A. No. I was merely on the Board of Directors after a time. I cannot remember whether I was on first 290
or put on later.

Q47. Did you have any financial control of the company? A. No. That was all in the hands of the other officers. I rarely met the directors and officers; I was away most of the time.

Q48. Now, what, if any changes took place in 1905, both in the copartnership and the corporation? A. Well, without referring to my partnership contract, I cannot remember whether the firm was still further extended then or not. But I know it was made forty years for one thing. I know that my relations with the corporation were changed so that it gave me the option of going into business separately in the far west in July, 1906. Some other changes were made; for example, they released the stock.

Q49. Was not that release of stock under a collateral agree- 291
ment with the Chapmans? A. No, I think a collateral agreement was made later than that.

Q50. Do you remember that the Chapmans advanced you a certain sum of money on that stock? A. No, I do not. I was assessed later on, in 1905, and they furnished the money for that assessment, and they took the new Modern Pen Co. stock as collateral. But the chief thing, it seems to me, was the division of territory, by which I had the chance to go into business in 1906.

Q51. What provision was made or what conversation did you have with the Chapmans, as to retiring from the firm of A. A.

292 *Arthur A. Waterman*

Waterman & Company? A. I was to retire, in consideration of something they gave me. I was to retire absolutely from the business of the firm A. A. Waterman & Company, July 1, 1906. I was to remain as salesman on one condition, one contingency, or I was to go into business in the far west in a separate undertaking.

Q52. What was said about your name remaining, the firm name of the partnership? A. Well, that was the condition, that my name should stay there perpetually with the business.

Q53. Did you have any conversation with I. E. Chapman about the use of your name by the partnership, after you had
293 retired as a member? A. Yes, sir; we had a good deal of discussion because of the Kellogg decree years before.

Q54. Now can you recall what you said to him and what he said to you? A. Well, I said that he might be called upon to defend himself, if they used that name. Col. Bacon thought that the fact of having the firm in existence—

Q55. This was before Col. Bacon came into this. That is the February, 1905, contract. Did Col. Bacon come into the case prior to the re-organization of the Frazer-Geyer Company? A. I think not. I think he did not appear there until along in May or June, when the re-organization was up.

Q56. Do you know by whom these contracts of February, 1905, were drawn? A. Well, I think they were gotten up by my attorney, Wm. E. Weaver, and Mr. Chapman's attorney,
294 probably Mr. Spear. I could not say which got them up in toto, because it was a question of altering and going back and forth a great deal.

Q57. Do you remember any provisions made in the contracts about forming a corporation under your name? A. Yes, sir.

Q58. Now state what conversation you had with reference to that provision with the Chapmans? A. Well, we were generally of the opinion that it might be safe to incorporate outside of the State of New York, as the Kellogg decree was a State matter entirely, but I had some apprehension about that, if I was not in the business.

Q59. What do you mean by you were not in the business? A. In case they should go on without me.

295

Q60. That is after your retirement from the firm? A. Yes, after the date fixed. I know that I asked for some protection so that I should not be considered in contempt of Court if I was held up in New York for seeming to disregard that original decree.

Q61. Did you have any discussions with the Chapmans as to the use of your name in the incorporated company? A. Yes, sir.

Q62. At this time, February, 1905? A. That is the agreement of February between myself and the corporation?

Q63. Yes. A. Yes, sir, I think there was some. I think they then began to lay the ground for enlarging the company and incorporating with the trade name of A. A. Waterman.

296

Q64. Which one of the Chapmans did you have that conversation with? A. Well, chiefly always with I. E. Chapman; sometimes W. L. Chapman participated.

Q65. What did they say in reference to indemnifying you against any loss or litigation, by reason of the use of your name in an incorporated company? A. They satisfied me that they would indemnify me. I do not know the exact terms of the offer or assurance, but there was an assurance given me that they would take care of me.

Q66. Was there anything said after the execution of these contracts, about incorporating the company under your name? A. Yes, I think there was. The matter was up a number of times in the following spring.

297

Q67. With whom did you have your conversations about that? A. I. E. Chapman.

Q68. Did he say that he wanted to incorporate a company under your name? A. Yes. They have always desired it. I think they felt as though it might not be safe. And the question of reorganization of Frazer & Geyer was uppermost, and there seems to be a tendency to put off settling details as long as possible. I think the name they finally took for the reorganization was not determined until the last minute.

Q69. And your name was discussed by the Chapmans as the name for the new company to be formed? A. Yes, sir.

298 *Arthur A. Waterman*

Q70. Now, what happened in the spring of 1905, to these companies, that is the Frazer & Geyer Company and A. A. Waterman & Company? A. Well, Mr. Chapman, as the one most interested in the combined business—you know they treated it as a combined business. Our annual statements were made out in one set of figures headed, A. A. Waterman & Company and Frazer & Geyer Company, and all the capital and everything put into one showing, so Mr. Chapman was the one who considered that he practically owned it. He had large interests, that is he and Frazer and others did, but he got at loggerheads with Frazer and succeeded in getting him into an insolvent con-
299 dition apparently, as he could not satisfy certain judgments for technical liabilities from A. A. Waterman & Company to either the Chapmans or Frazer & Geyer Company, I forgot which, and in advising with Col. Bacon, they regarded Frazer's condition in being unable to satisfy these judgments as acting as a dissolution of the firm, because he was a bankrupt, although he was not put into bankruptcy; and being so, it was thought that A. A. Waterman & Company existed no longer. And then I made a new partnership with I. E. Chapman and William L. Chapman, under the name of A. A. Waterman & Company.

Q71. Now, you may state the relations between A. A. Waterman & Company and the Frazer & Geyer Company, under the contract, prior to June 12, 1905. That is, the way they did their business, the way they kept their accounts, and what busi-
300 ness was done by the partnership and what business was done by the corporation? A. Well, the corporation owned the manufacturing plant for making gold pens and the holders—for making the complete pens as well. They sold some complete pens directly under their own name, the Frazer & Geyer Company, but the chief part of their manufacturing was the producing of A. A. Waterman & Company goods, and A. A. Waterman & Company bought the goods of the corporation, in a sense. They were charged up at very high prices for the express purpose of keeping A. A. Waterman & Company indebted to the Frazer & Geyer Company corporation; and, indebted beyond the possibility of paying. Now, A. A. Waterman

301

& Company, as a firm, took these goods on credit and sold them generally, and made collections and turned over what money they had left from their particular department after paying expenses to Frazer & Geyer Company on account, but always having a large indebtedness, which annually was washed off the slate.

Q72. Now, did A. A. Waterman & Company, the partnership, make any profits under these old contracts, that is, the contract prior to June 12, 1905? A. The partners?

Q73. Yes? A. No, the profits were all given to the Frazer & Geyer Company. It was expressly stipulated that whatever each partner should get in the old partnership, was turned over for the good of the Frazer & Geyer Company corporation.

302

Q74. Did you receive any pecuniary profit from A. A. Waterman & Company? A. No, I just said I had nothing there at all.

Q75. That is, under the contract from December, 1901, to June 12, 1905, you received no profits from A. A. Waterman & Company? A. They audited my salary through the A. A. Waterman & Company It was a nominal salary and expense account, but the profits, the returns to me that I depended upon, were a certain share of the earnings of the corporation and the dividends on stock that I got. I had a contract that called for certain share of their gross earnings as well as the net earnings which came in the form of a dividend.

Q76. That is from the gross earnings and the net earnings of the one corporation? A. Yes. I got it on the corporation's earnings. Not from the firm; these earnings had nothing to do with the firm at all.

303

Q77. Now, June 12, 1905, you testified that you entered into a new partnership of A. A. Waterman & Company, with Isaac E. Chapman and William L. Chapman. Did that new partnership assume any of the indebtedness of the old partnership? A. No. I cannot recollect that it assumed anything.

Q78. Now, what were your functions under this new partnership of June 12, 1905? A. I do not recollect that I had any functions. Possibly I was to be consulted as regards forms and styles of goods.

304 *Arthur A. Waterman*

Q79. Did you have any active management in the copartnership? A. No.

Q80. Did you have any management whatever in the partnership? A. No.

Q81. Who managed the partnership? A. I do not know whether it was expressly stated that I. E. Chapman should manage it alone or whether he with William Chapman. I know that I was to have nothing to do with the management. The copartnership was only organized to continue the good will and name of the business, and the firm was to have no function whatever, no active function. A. A. Waterman & Company was
305 just on paper. And Col. Bacon said it was not necessary for it to do anything, but just let the Modern Pen Company go ahead as though it was the only party.

Q82. Was there anything said about the use of your name? A. Yes, of course, the partnership was to use my name. That is the only condition in which they made the partnership, that it should be A. A. Waterman & Company.

Q83. And what function had the Modern Pen Company? A. Well, ostensibly they were to be the selling agents of the manufactory of A. A. Waterman & Company. But actually A. A. Waterman & Company was not to do anything.

Q84. Did you still balance accounts between the firm and the Modern Pen Company? A. No; there were no accounts at all, no relationship in the matter.

306 Q85. The entire business was done by the Modern Pen Company? A. Yes, sir.

Q86. Did they bill goods from the copartnership to the Modern Pen Company? A. No.

Q87. Did the partnership have any office? A. Yes. I think the name was on the old door; always had been up there. They had the same offices they used to have when it was a dual relation between A. A. Waterman & Company and the Frazer & Geyer Company, and this was kept up, I think the name probably is there yet.

Q88. Now, what was said by the Chapmans to secure the use of your name under this partnership of June 12, 1905? A. Why, there is a clause there somewhere—

Q89. Never mind that. What was the conversation between you and Chapman there, I. E. Chapman or W. L. Chapman, about securing the use of your name for this partnership of June 12, 1905? A. That almost goes without saying that *sin que non*, I was to go into it and drop out after a certain time, and they were to continue the name.

Q90. For how long were they to continue the name? A. For the time of that old partnership, I think forty years. Perhaps about 35 left then.

Q91. After you got out of the partnership how long were they to continue the use of your name? A. Perpetual—I do not suppose it would be beyond the life of the partnership, which would be about thirty-five years. It was to go to their heirs. 308

Q92. What was said by the Chapmans about securing the use of your name, and for what period, in this contract of June 12, 1905? A. I do not remember that they seemed to have any desire to hold the name beyond the period of the contract, the limits of the contract, but they should have it if I dropped out or died. I remember that.

Q93. If you dropped out of the partnership? A. Yes, if I dropped out of the partnership for any cause that I have very clearly in my mind. I cannot tell about the exact wording of their conditions.

Q94. Do you remember whether you transferred the right to use the name of A. A. Waterman and the firm name of A. A. Waterman & Company, perpetually, to this new partnership? 309
A. Yes, I remember there was a remark about perpetual.

Q95. Do you remember any conversation you had with Chapman or either of them, about this perpetual use of your name and the name of A. A. Waterman & Company? A. Why, it seems to me they wanted it perpetual, but I did not attach any importance to it, because I would be dead and gone before the partnership was over, and I thought they could have anything they wanted. To me it was sufficient that I had the intention of going into western business and staying there, and having no more to do with the east, and did not care what they did.

310 *Arthur A. Waterman*

Q96. Was this arrangement about the division of territory continued? A. Yes, it was continued but in a modified way.

Q97. What was said to you by Isaac E. Chapman about starting in business under your own name, under this contract of June 12, 1905? A. About my going into business?

Q98. Yes? A. I do not think he said much to me about my going into business in my own name or incorporating. Of course it was all provided for in the contract that I should do so, and he said if I incorporated he would be curious to watch the result of it, but I did not feel very friendly to him then and did not take him very much into my confidence as to what I was to do in the west after the thing was through.

311 Q99. Did he say anything to you about the participation in the management you should have in this new copartnership? A. Oh, that was effectually provided for that I should have none at all.

Q100. Did you, as a matter of fact, have anything to do with the management of this new partnership? A. No, nothing whatever.

Q101. What did you actually do under this partnership agreement of June 12, 1905? A. I was a salesman for the Modern Pen Company.

Q102. For the Modern Pen Company? A. Yes, sir.

Q103. Did you advise with the Chapmans about the business of A. A. Waterman & Company? A. Well, only so far as we

312 talked of the lines of goods and the literature, the Modern Pen Company would, yes.

Q104. Only as the Modern Pen Company would use it? A. Yes, sir.

Q105. Did I. E. Chapman say anything to you with reference to his desire to secure the use of your name for the fountain pen business? A. Yes, that was gone over from the start repeatedly.

Q106. That he wanted your name, that he wanted to use your name in the fountain pen business? A. Why, certainly.

Q107. Did you ever ask I. E. Chapman or W. L. Chapman for a voice in the management of the partnership? A. Not after the partnership was made.

Q108. Before it was made? A. Yes, I strove to get a position there that would give me more or less control of the business, but it was impossible.

Q109. What did they say? A. I was not financially important; my experience was not sufficient. They were the ones to furnish the money and manage the business.

Q110. And did they say to you that all they wanted of you was the use of your name? A. Well, not all, but that was the large asset, that was the reason for making the partnership; would not have made that with me if I had had some other name.

Q111. With whom did you have these conversations? A. Chiefly with I. E. Chapman. Sometimes with W. L. Sometimes with some of the investors or stockholders 314

Q112. Who drew this contract of June 12, 1905? A. Col. Bacon. Some changes were made at my instance.

Q113. What reorganization, if any, took place in 1905, in the Frazer & Geyer Company? A. The stockholders of Frazer & Geyer Company took stock in the Modern Pen Company, and paid something equivalent to an assessment; they paid a premium to get the stock. I think it was 20% on the new stock issue, twenty or twenty-five per cent. It was twenty per cent because I held five thousand dollars of the stock, the old stock, and I took that amount in the new, and agreed to pay a thousand, and then I put my stock in as security for some notes that I gave the Chapmans to make these payments. 315

Q114. Who did you give the notes to? A. I do not remember whether I gave them to I. E. Chapman personally or to the Modern Pen Company. I think it was the Modern Pen Company.

Q115. What happened to your stock? A. I refused to pay after we got at loggerheads. I paid part of it, and they sued me on the notes.

Q116. Who sued you? A. I think the Modern Pen Company. The suits were brought in Chicago. Yes, it must have been the Modern Pen Company, because I became bankrupt last winter and I stated there were judgments in favor of the

Modern Pen Company. They retained the stock, of course. The stock was notified and sold off in New York. I remember seeing notice, and I tried to get some friends of mine to go and make them pay high for it. I remember that. It was a legal sale to satisfy these judgments, I suppose.

Q117. Now, what was said to you by the Chapmans in reference to going into business under your own name and management? A. That is a pretty comprehensive question—what is that?

Q118. What was said to you by the Chapmans about going into business under your own name and management, under
317 these contracts of June 12, 1905? A. Do you mean what was provided for in the agreements?

Q119. No, what conversations did you have with them about going into business? A. You mean the reasons for going into business, or the plans for going into business, or what?

Q120. The reasons or plans for going into business? A. The reason was I wanted a separate business was because the New York business was not managed to my liking. I wanted to organize a business in the west and take hold of the field I had travelled over, and have it for my own. They conceded that to me reluctantly, if I would do certain things. One of these things was to form this partnership—

Q121. That is the partnership of June 12, 1905? A. Yes. They got Frazer out of it, and they got control as the chief
318 monied interest.

Q122. And that was one of the conditions on which the partnership of June 12, 1906, was made? A. Yes. I know one day Chapman says to me, if Frazer gets out will you make a partnership with me and my brother, if you can have your own way about the western territory, and I said yes, I would.

Q123. Was there anything said at that time to you about your dropping out of the partnership in the east? A. No, that was put in, I think, when we drew the partnership. I do not remember if it was part verbal—that was part of the verbal condition. For instance, I do not think he said to me, "Will you

form a partnership with us, and then drop out?" But it was provided for when we came to discuss the papers. 319

Q124. Well, did they insist or say anything to you about dropping out July 1, 1906? A. It was insisted on or they would not have signed the papers. They insisted on that as one of the conditions, yes.

Q125. That is, they required that you should drop out July 1, 1906? A. They required many things. That was one of them, that was one of the essential things, else they would not give me so good terms in the west. I asked for all the territory in the west; I asked them to keep out of all the territory west of a certain zig-zag line, and they said they would, if I did certain things for them. 320

Q126. One of these things was that you were to quit this partnership on July 1st? A. Yes, sir; and that was absolute.

Q127. Did they say they intended to continue the business in your name after July 1, 1906? A. Well, they wanted to be free to; they did not make any understanding to me to perpetuate the name, but they wanted to be free too. I was not sure that my name would stay in New York. They might sell it to L. E. Waterman, for all I knew.

Q128. They wanted to be free to use your name? A. They wanted to be free to use it, or play with it, or whatever they wanted to do.

Q129. And were you to have the right to come back in the east and start in business under your name? A. No. 321

Q130. Now, what was said in reference to your starting in business, the fountain pen business, anywhere, under your own name or firm name, provided that you did not go in business in the west under the terms of this contract of June 12, 1905? A. That is, provided I stopped being salesman and going into business both?

Q131. Yes? A. Then I was to quit the business. I was out.

Q132. Do you mean that they required that you should never go into the fountain pen business under your own name? A. Yes. I cannot say that was expressly stated in the partnership, but I think that was the intention of it.

322 *Arthur A. Waterman*

Q133. That was said to you? A. That was the consideration proposed. I offered as much. I wanted to get certain points in order to get my western opportunity. I was ready to concede most anything to get it.

Q134. Was that one of the requirements made as a condition of granting you this western territory? A. Why, yes, it was. I do not think I could have got any agreement out of them with that left out. I remember what stress they laid upon it. We always discussed half a dozen things at once, that and other things, and so they would always shade one thing and not another.

323 Q135. Was anything ever said by the Chapmans about continuing an independent business under any other name than your own? A. No. I think there was a casual mention of the fact that they were at liberty to do what they pleased—because that is obvious. It was clear to my mind that they would not take any other name than my name.

Q136. Did they say they wanted to use your name because it was "Waterman"? A. Well, I think they were cautious to say because it was A. A. Waterman. I have heard them say to the stockholders that that Waterman was a big asset. I had lectured them so much on the prior rights of the L. E. Waterman Company and that old injunction, that they were rather cautious how they spoke to me about it.

Q137. Now, what did you do with reference to entering into
324 business in the western territory prior to July 1, 1906? A. What plans did I make?

Q138. What did you do? A. Well, I worked for the Modern Pen Company, building up the trade as representative for them, for that period. That is, over a year, and laid my plans to go into business in the west.

Q139. Did you go into business in the west? A. Yes, July 1, 1906.

Q140. Since that time have you had any connection with the firm of A. A. Waterman & Company, composed of W. L. Chapman and Isaac E. Chapman? A. No.

Q141. Have you received any profits or employment from them? A. No, sir.

325

Q142. Have you sold any goods for the firm? A. No, sir.

Q143. Received any commissions? A. No, sir.

Q144. Done any joint advertising with the firm? A. No.

Q145. Have you used any trade-marks, trade names, or patents, in which the partnership of A. A. Waterman & Company and the Modern Pen Company has any interest or rights? A. Why, yes, you speak of the Chicago business, then by their arrangement they were to use the same names and trade-marks that we used in the east.

Q146. But you personally? A. Personally I have not.

Q147. Have you taken out any patents or improvements on patents since July 1st, 1906? A. How would that effect them.

326

Q148. Under the terms of the contract that they had the right to use it? A. No.

Q149. Have you used any patents which the Chapmans or the Modern Pen Company had taken out since July 1st, 1906? A. Personally?

Q150. Yes? A. No, not at all. Of course, there has always been that relation all the time—

Q151. Has any partnership of which you are a member, used any patent or taken out any letters on patents since July 1, 1906, in which the Chapmans have any rights or the Modern Pen Company have any rights? A. No.

Q152. Have you or any member of the firm of A. A. Waterman & Co. entered into any agreement as to the minimum price that goods are to be sold for in eastern and western territory?

327

A. I personally?

Q153. You personally, with any member of the firm of A. A. Waterman & Company? A. No.

Q154. Is there any firm of A. A. Waterman & Co., in which you are interested, or of which you are a member? A. No, there is A. A. Waterman & Company, a corporation of Chicago, and a firm of the same name in New York. I have no connection with or interest in either concern.

Mr. Raymond: This closes the direct-examination of the witness.

328

Mr. Emmons: We ask at this time for a continuance of the taking of this deposition for one week, to enable me to get advices from New York, so that I may be able to properly cross-examine the witness.

Mr. Raymond: I object to any continuance of the taking of this deposition.

Mr. Hopkins: I will deny the application for a continuance.

At this time, for the purpose of permitting the stenographer to prepare a transcript of the deposition taken, an adjournment was taken until September 15th, 1910, at the hour of 10 A. M.

329

And now on this 15th day of September, 1910, at ten o'clock A. M. of said day, counsel for the respective parties appeared, and by agreement, the hearing was continued until the hour of 3 o'clock P. M. of said day.

And now, at 3 o'clock P. M., this 15th day of September, 1910, the respective counsel and the witness being present, the hearing of said deposition was proceeded with as follows:

330

Mr. Emmons: I renew my motion for a continuance of this hearing until I have had time to hear from counsel in New York, so that I may be advised in relation to the same.

CROSS-EXAMINATION by Mr. Emmons:

XQ1. How long have you been in the manufacture of fountain pens? A. Since July, 1897, until July 1st, 1906.

XQ2. Then you were engaged in the manufacture of fountain pens prior to 1905? A. Yes, sir. My firm was. I had everything in a firm style at that time.

XQ3. How did you mark the pens manufactured and sold by you during that time? A. I do not know how to answer that. You understand I was manufacturing in the sense that I was a member of a firm. The firm's name I could give you.

XQ4. Were any of the pens manufactured and sold by you, or the firm of A. A. Waterman or A. A. Waterman & Company? A. Yes, sir.

XQ5. If so, for how long a time before 1905, did you manufacture pens and mark them A. A. Waterman? A. They were manufactured and sold as A. A. Waterman from February, 1899, until the following June. The various firms manufactured them all the rest of the time.

XQ6. For how long a time before 1905 did you manufacture 332
pens and sell them, marked A. A. Waterman & Company? A. That makes it nearly eight years.

XQ7. Is it not a fact that for a period of ten years prior to 1905, you were actively engaged in the manufacture and sale of fountain pens? A. No.

XQ8. Marking them A. A. Waterman or A. A. Waterman & Co.? A. The first pens so marked were manufactured in 1897.

XQ9. Were you continuously in business from 1898 to July 1st, 1906, in New York or Boston, and always openly manufacturing and selling fountain pens under your own name? A. Almost continually.

XQ10. For what period of time were you out of business? 333
A. When they were marked A. A. Waterman I was not very active. Probably half the period mentioned I did not handle any pens.

XQ11. Was this fact known to L. E. Waterman & Company? A. Yes, whatever I did was pretty well known to them.

XQ12. When did you first go into partnership with I. E. and William L. Chapman? A. In the spring of 1905.

XQ13. Was this partnership agreement in writing, that you had with them? A. Yes, sir.

XQ14. For how long a time was it to continue? A. It was to continue for thirty-five years, I think.

XQ15. Has this period expired yet? A. That period has not expired.

XQ16. Has the partnership ever been dissolved? A. As to me it has been dissolved, by my retiring.

XQ17. As a matter of fact, the partnership agreement is still in existence, and there has never been any dissolution of the partnership, has there? A. I can only speak from personal knowledge of having stepped out of it, by hearsay,—they are going on using the name of A. A. Waterman & Company.

Mr. Emmons: I renew my request that this hearing be continued until such time as I may have an opportunity
335 to cross-examine the witness further; or that it be adjourned to some other place where the witness can be examined.

Mr. Raymond: I object to this on the ground that it appears that counsel for the defendant had ample time to send his papers to Seattle, but instead of so doing, sent them to Minneapolis. And if he has lost any opportunity to more fully cross-examine, it is due to his own fault.

RE-DIRECT EXAMINATION by Mr. Raymond:

RDQ1. Do you know what office I. E. Chapman, referred to in your direct-examination, as the one with whom you had the conversations, held in the Frazer & Geyer Company, during
336 the times mentioned in your direct-examination? A. I think Mr. Chapman was simply a director of the Frazer & Geyer Company.

RDQ2. Do you know what office he held in the Modern Pen Company during the times when you held these conversations with him? A. He was president of the Modern Pen Company. But I will say that large part of the conversations were held prior to the existence of the Modern Pen Company, during its formative condition.

RDQ3. Now, do you know what office William L. Chapman held in the Frazer & Geyer Company, at the times when you

had the conversations with him? A. I am not sure that he held any position at all.

RDQ4. Do you know what office he held in the Modern Pen Company? A. Treasurer and secretary, I think of the Modern Pen Company.

Deposition closed.

ARTHUR A. WATERMAN.

UNITED STATES CIRCUIT COURT,

338

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

against

MODERN PEN COMPANY,
Defendant.

Testimony on Behalf of Plaintiff.

339

Testimony taken before A. M. Parkins, a notary public in and for the District of Columbia, at her office, Room No. 516, Washington Loan & Trust Building, Ninth & F Streets, Northwest, in the City of Washington, District of Columbia, on the Twenty-ninth day of December, 1910, pursuant to notice annexed hereto; testimony taken for final hearing on behalf of the plaintiff.

Appearances:

Samuel S. Watson, for Plaintiff.
Alexander S. Bacon, for Defendant.

340 Mr. Bacon: I object to the taking of this testimony, on the grounds that the time for the plaintiff to take testimony in this action has long since expired.

Mr. Watson: Counsel for plaintiff states that pending the determination of a motion for a preliminary injunction in this action, he received a letter from the attorney for the defendant, suggesting that no further action be taken in the prosecution of this case until after a determination of the proceedings on the preliminary injunction. That acceding to this suggestion no testimony was taken in this action until after the Circuit Court of Appeals had passed on the injunction matter.

341 Mr. Bacon: I call for the production of the letter and for any other letter or writing in which the plaintiff's attorney acceded to any suggestion that may have been contained in any such letter.

Mr. Watson: Counsel for plaintiff has not the letter here at this time, but will produce it at the next hearing and the record will show that he acceded to the suggestion contained in the letter, in as much as no testimony was taken after the receipt of that letter until after the determination of the preliminary injunction proceedings in the Circuit Court of Appeals.

342 JOHN SAADI, a witness on behalf of the plaintiff, being first duly sworn, deposes as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, age, place of residence and occupation? A. John Saadi, 45, Washington, D. C., 602 Ninth Street, N. W., jewelry merchant.

Q2. Are you here under subpoena? A. I am.

Q3. When was that subpoena served on you? A. Last week.

Q4. You are in business in the City of Washington, D. C., at No. 602 Ninth Street, N. W., are you not? A. I am, yes, sir.

Q5. How long have you been in business there? A. I think this is my third year.

Q6. You were the defendant in an action brought by the L. E. Waterman Co. for infringement of trade-marks and unfair trade in the selling of fountain pens, were you not? A. Yes, sir.

Q7. That case has gone to final hearing and an injunction order issued thereon? A. Yes, sir.

Mr. Bacon: Objected to as immaterial, incompetent and not the best evidence, and all objections are made for the purpose of presenting them for final hearing.

Q8. Have you at any time sold fountain pens which were marked Royal Ideal Pens or A. A. Waterman & Co.? A. I sold Royal Ideal Pens and the points marked A. A. Waterman & Co. 344

Q9. From whom did you get these fountain pens? A. From A. A. Waterman & Co. or the Modern Pen Co.

Q10. Where is their place of business? A. 22 Thames Street, New York City.

Q11. I show you a fountain pen and ask you if that is a fair sample of the fountain pens which you received from the Modern Pen Co. or A. A. Waterman & Co., which you sold and which were marked Royal Ideal Pen and which also bore the name of A. A. Waterman & Co.? A. Yes, sir.

Mr. Watson: The plaintiff offers the pen identified by the witness in evidence and asks that it be marked "Plaintiff's Exhibit No. 14." 345

(The pen is so marked.)

Q12. When did you begin to get pens like Exhibit No. 14, and marked as that exhibit is, from the defendant? A. The latter part of the summer of 1910—I mean 1909—1909.

Q13. You previously testified, did you not, that you begun to get these pens and sold these pens in the early summer of 1909? A. Well, during the summer—it was during the summer of 1909.

Q14. How long did you continue to get these pens like Exhibit No. 14 and marked as that exhibit is, from the defendant? A. Until the fall of 1909.

346 *John Saadi*

Q15. You got some of these pens marked as Exhibit Fourteen is as late as December, 1909, did you not? A. December, 1909—the early part, I think it was.

Q16. You testified in your former deposition, in the action in which you were the defendant, and L. E. Waterman Co. was the plaintiff, did you not? A. I did.

Q17. And in that deposition you testified that you received thirty-nine dozen of these pens in December, 1909, did you not?

Mr. Bacon: Objected to as very leading, irrelevant and incompetent.

347 A. Yes, sir.

Q18. Prior to the receipt of that bill of fountain pens, you had received a considerable stock of these pens, had you not? A. Not a considerable stock.

Q19. You had a stock of these pens in hand prior to December, 1909? A. Yes, sir.

Q20. And you had had all the time from sometime in the summer of 1909 until sometime in December, 1909? A. Yes, sir.

Q21. And you received all of these fountain pens from the defendant in this case, did you not? A. Yes, sir.

Q22. And you received these fountain pens in the same shape as you sold them, did you not? A. Yes, sir.

348 Q23. And you received them marked in the manner similar to the marks on Exhibit Fourteen, did you not? A. Yes, sir.

Q24. These were complete fountain pens when you received them from the defendant? A. Yes, sir.

Q25. You sold the fountain pens like Exhibit Fourteen in boxes similar to the one I now show you, did you not? A. (Witness after examining box.) Yes, sir.

Q26. Were these boxes furnished to you by the defendant in this case? A. Yes, sir.

Mr. Watson: Counsel for plaintiff offers the box identified by the witness in evidence, and asks that it be marked "Plaintiff's Exhibit No. 15." The box bears the im-

printing, "Royal Ideal Pen Co., 244 Steuben Street, Brooklyn, N. Y.—Royal Ideal Pen—Fountain Pen 14 Karat Gold—Sales Office 602 Ninth Street, N. W., Washington, D. C." The fountain pen (Exhibit No. 14), bears the imprinting "Royal Ideal Pen—Fountain Pen—14 Karat Gold," and in back-ground is some device that looks like part of the representation of a globe. The pen also bears the name "A. A. Waterman & Co., N. Y.," and the figure "1" underneath it.

Q27. Mr. Saadi, can you produce such books of account, memoranda, bills, letters and other data which you have, which shows the receipt by you of fountain pens from the defendant, 350 bearing the marks similar to the marking on Exhibit Fourteen? A. All I have I gave to you the last time.

Q28. Do you not keep any books of account? A. No, sir.

Q29. Do you keep no record of the goods you receive? A. No, sir.

Q30. You do business also in Richmond, Virginia, and Wilmington, Delaware, do you not? A. Well, I used to in Richmond, Virginia, but I gave it up—it did not pay.

Q31. You gave it up? A. Yes, sir—it was not paying and I started to do business about five weeks ago in Wilmington.

Q32. You were selling fountain pens received from the defendant, which were marked similar to Exhibit Fourteen, in Richmond, Virginia, and during the same time that you were 351 selling these pens in Washington, were you not? A. Yes, sir.

Q33. And you carried a stock of these pens in your Richmond store at that time, did you not? A. Yes, sir.

Q34. Did you stop selling these pens which were marked similar to Exhibit Fourteen, and when? A. Yes, sir, I did; as soon as the justice gave his opinion that it is an infringement or something to that effect.

Q36. You refer to Justice Barnard's opinion, that the pens similar to Exhibit Fourteen were an infringement? A. Yes, sir.

352 *John Saadi*

Q37. And that opinion was to the effect that pens marked like Exhibit Fourteen were an infringement of the L. E. Waterman & Co.'s trade-marks and trade names, was it not? A. Yes, sir.

Q38. That decision or opinion was given orally, was it not? A. Yes, sir; it was given orally.

Q39. When was that opinion given? A. I cannot give the exact date—just before Christmas.

Q40. What did you do with the fountain pens which were marked like Exhibit Fourteen, after you stopped selling them in December, 1909? A. Destroyed the name—the imprint, I mean, and changed the pen points.

353 Q41. Where did you do that? A. I changed the pen points in New York—at the A. A. Waterman & Co. factory.

Q42. Where did you change the marking on the rubber holder of the fountain pens? A. I burnt it myself.

Q44. Did you send these fountain pens to the defendant or the A. A. Waterman & Co. of New York, to have them change the gold pens in them? A. No—I took the gold pen out of the pens and gave them to them to change.

Q45. You did not send the whole pen to New York, to have the change made? A. No, sir.

CROSS-EXAMINATION by Mr. Bacon:

354 By Mr. Bacon: Cross-examination is made subject to the specification at the beginning of the testimony as to the plaintiff's time not being extended by order or consent.

XQ46. How long have you been dealing in fountain pens? A. Several years—eight or nine years or over.

XQ47. How long have you been buying pens of A. A. Waterman & Company? A. I think about four years or little over.

XQ48. Referring to Exhibit Fourteen of this date is any part on it marked Royal Ideal Pen except on the holder? A. No, sir.

XQ49. The pen point is marked A. A. Waterman & Co. A. Yes, sir.

355

XQ50. And no part of the pen excepting the point is marked A. A. Waterman & Co? A. No, sir, no part at all.

XQ51. Did all of the pens that you bought from A. A. Waterman & Co., where the holders were marked Royal Ideal Pen have pen points bearing the name A. A. Waterman & Co., or were some of them blank? A. Some of them were blank.

XQ52. How many styles of that pen did you buy? A. Three styles, I think.

XQ53. How many had A. A. Waterman & Co. pen points in them? A. Two styles.

XQ54. Were there not two styles of each? A. Some of them were with the words "14 Karat" and some were not.

356

XQ55. Can you tell how many of each you got at any time outside of that bill you are now reading or looking at? A. No, sir, they were mixed.

XQ56. Then after Judge Barnard heard the argument and reserved decision on December 17th, did you sell any pens marked "Royal Ideal Pen"? A. No, sir.

XQ57. Did you immediately erase the word "Ideal" from all pens or penholders in your possession on that date? A. Yes, sir.

XQ58. I believe you have stated that none of the holders bore the name A. A. Waterman & Co.? A. No, sir.

XQ59. Did you, at any time, advertise fountain pens without the name A. A. Waterman & Co.? A. No, sir.

357

XQ60. Do you remember going to New York the first time any penholders were ordered marked Royal Ideal Pen? A. Yes, sir.

XQ61. Is this your handwriting? A. Yes, sir.

XQ62. Did you give this to Mr. Geyer with whom you made the arrangements? A. Yes, sir.

Mr. Bacon: This is offered in evidence and I ask that it be marked "Defendant's Exhibit C."

Mr. Watson: Objected to as immaterial and irrelevant.

XQ63. This memoranda that you gave to Mr. Geyer contains the statement "Registered in United States Patent Office No. 14975"? A. Yes, sir.

358 *John Saadi*

XQ64. Did you have a trade-mark registered as of that number? A. Yes, sir.

Mr. Watson: Objected to as incompetent and not the best evidence.

XQ65. Have you the Patent Office registers here? A. Yes, sir.

XQ66. Are these they? A. Yes, sir.

XQ67. Then you had two trade-marks registered? A. Yes, sir.

Mr. Watson: Objected to as incompetent and not the
359 best evidence.

XQ68. These are the only two? A. Yes, sir.

Mr. Bacon: I offer this in evidence. This certificate bears the words and figures "No. 14919, May 20, 1909," and it is registered by "John Saadi of Brooklyn, N. Y., and Washington, D. C."—"deposited in this office for registeration a label of which the following is the title 'Royal Ideal Pen (for fountain pens)'" and I ask that it be marked "Defendant's Exhibit D."

Mr. Watson: Objected to as incompetent and immaterial and irrelevant and on the further grounds that it is not a trade-mark.

360 Mr. Bacon: I offer in evidence "Defendant's Exhibit E"—certificate of registration No. 14975, dated June 17, 1909, registered by John Saadi of Washington, D. C., "deposited in this office for registration a label of which the following is the title 'Royal Ideal Pen for fountain pens.'"

Mr. Watson: Same objection as above.

(Stipulation by Counsel.)

It is consented that Mr. Saadi may retain these originals and that Patent Office copies may be used in their places.

Mr. Bacon (continuing examination):

XQ69. When you ordered these penholders marked Royal Ideal Pen did you at that time already have these trade-marks registered? A. Yes, sir.

361

XQ70. Did you believe that you had a perfect right to use that name?

Mr. Watson: Objected to as entirely immaterial, irrelevant and incompetent.

A. Yes, sir.

XQ71. About how many penholders did you ever sell that bore the imprint Royal Ideal Pen? A. I have not sold one gross—may be less, but not more.

Mr. Watson: That is objected to as immaterial.

XQ72. After the Judge's oral decision did you send back to the A. A. Waterman Co. the gold pen points bearing their names? 362
A. Yes, sir.

XQ73. And since that time have you sold any fountain pens or any pen points bearing their name? A. No, sir.

XQ74. Of the gross that you sold how many of them do you think had pen points in them bearing the name of A. A. Waterman & Co.?

Mr. Watson: Objected to as incompetent and immaterial.

A. I cannot tell you exactly; I have no record of them. May be one-third and may be one-fourth.

XQ75. How long have you been using a trade-mark or device of a circle or globe with Africa inside of it? 363

Mr. Watson: Objected to as immaterial.

A. About ten years—may be nine years.

Mr. Bacon: That is all.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ76. When you bought these pens from the defendant which were marked like Exhibit Fourteen, whom did you buy them from? A. A. A. Waterman & Co.

264 *John Saadi*

RDQ77. Whom did you see when you bought them? A. Mr. Geyer.

RDQ78. The gentleman who is present here? A. Yes, sir.

RDQ79. Mr. Hobart W. Geyer? A. Yes, sir.

RDQ80. When did you first see him about buying these pens? A. About the summer of 1909.

RDQ81. And you begun to receive the pens shortly after that time? A. Samples; yes, sir.

RDQ82. When did you first receive your stock of these goods? A. Summer of 1909.

RDQ83. When did you see Mr. Geyer again after you made
365 your arrangements to buy these pens like Exhibit Fourteen? A. When I am in New York I call in to see him.

RDQ84. Did you not see him in December, 1909? A. No, sir.

RDQ85. The L. E. Waterman Co. begun action against you here in December, 1909, did it not? A. Yes, sir; but I did not see him in December, that was before Christmas—no, sir, I did not see him in December.

RDQ86. When did you see him after the action was begun? A. In January.

RDQ87. What did you say to him when you saw him in January? A. I told him that it seems that I cannot sell the Royal Ideal Pen and I have to change the words A. A. Waterman & Co. from the point and he said that he would change them.

366 RDQ88. You told him about the suit here? A. I did.

RDQ89. You told him that the L. E. Waterman Co. was bringing suit against you for selling pens marked with the words Royal Ideal Pen? A. Yes, sir; Royal Ideal Pen and any pens bearing the name of A. A. Waterman & Co.

RDQ90. And that was in January, 1910, or after Christmas? A. Yes, sir, right after Christmas.

RDQ91. Was it right after Christmas? A. I made him know of it as soon as I was served with the notice.

RDQ92. You wrote him a letter? A. I sent him a telegram.

RDQ93. Did you also write him? A. I did. I think I did—I do not keep records of my letters.

Mr. Watson: Counsel for plaintiff calls upon counsel for defendant to produce at the next hearing letters and telegrams received from John Saadi regarding these pens marked Royal Ideal Pen.

Mr. Saadi (the witness): The telegram was not for that Mr. Watson. The telegram was for them to give me the decision of the Court some eight years ago. That was the telegram and they sent me the decision of the Court, so the lawyers here could understand about how to defend the case of A. A. Waterman & Co.

RDQ95. You knew about that decision before this action was brought against you by the L. E. Waterman Co. did you not? A. 368
Yes, sir.

RDQ96. At or about the time that you sent this telegram, did you not also write the defendant or A. A. Waterman & Co. about this suit against you by the L. E. Waterman Co? A. I may have written.

RDQ97. About how many times did you see Mr. Geyer about this suit after it was begun against you by the L. E. Waterman Co.? A. Before or after it was begun?

RDQ98. After it was begun? A. I cannot tell you—two or three times.

RDQ99. You saw him in New York? A. Yes, sir.

RDQ100. And he was the man in charge of A. A. Waterman & Co. at that time? A. Yes, sir.

369

RDQ101. He was in charge of the office and general manager of A. A. Waterman & Co. and the defendant? A. Yes, sir.

RDQ102. Do you remember me calling on you in November, 1909, about a month prior to the beginning of action against you by the L. E. Waterman Co. and notifying you that these pens marked like Exhibit Fourteen were infringements of the L. E. Waterman Co. trade-marks and trade names? A. I remember seeing you at the store buying a fountain pen and telling me that I had no right to sell these kind of pens.

RDQ103. That was about three or four weeks before suit was brought against you was it not? A. I cannot remember.

RDQ104. And you continued to sell the pens just the same after I notified you not to? A. I did.

RDQ105. And you continued to sell them until Justice Barnard passed his oral opinion just before Christmas, 1909? A. Yes, sir.

RDQ106. You advertised these pens in the newspapers did you not? A. I did.

RDQ107. And you advertised them in connection with the name Royal Ideal Pen and also in connection with the name A. A. Waterman & Co.? A. I did.

RDQ108. And you had a large sign on your window in which
371 these pens were displayed? A. Yes, sir.

RDQ109. That sign read "Fountain Pens"? A. Yes, sir.

RDQ110. And you also had on that window the name A. A. Waterman & Co.? A. Yes, sir.

RDQ111. And also the words Royal Ideal Pen? A. Yes, sir.

RDQ112. And you had a number of signs in the window where these pens like Exhibit Fourteen were displayed which bore the name Royal Ideal Pen? A. Yes, sir.

RDQ113. Also these signs bore the name A. A. Waterman & Co.? A. Yes, sir.

RDQ114. How long have you used the device which looks like a globe on fountain pens? A. On fountain pens?

RDQ115. Yes? A. Since the summer of 1909.

372 RDQ116. You never used it before that time did you on fountain pens? A. No, sir; not on fountain pens.

Mr. Watson: That is all.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ117. You used it on letter heads, labels and such as that did you not? A. Yes, sir.

RXQ118. A. A. Waterman & Co. or the Modern Pen Co. did not have anything to do with your signs? A. No, sir.

373

RXQ119. And on the window was the name Royal Ideal Pen in connection with the words A. A. Waterman & Co. and on the opposite side were the words "Fountain Pen"? A. Yes, sir.

RXQ120. The words "fountain pen" were in big letters and on one side was Royal Ideal Pen and on the other side was A. A. Waterman & Co.? A. Yes, sir.

RXQ121. Have you paid for the last bill of goods sent you? A. No, sir.

Mr. Watson: Objected to as immaterial.

RXQ122. How much do you owe them on their bill for fountain pens marked Royal Ideal Pen?

374

Mr. Watson: Objected to as immaterial.

A. $236.00.

RXQ123. About how long have you owed them? A. Since December, 1909.

Mr. Watson: Objected to as immaterial.

Mr. Watson further examines witness.

RXQ124. Mr. Saadi, how large were the letters bearing the name A. A. Waterman & Co. and Royal Ideal Pen on your window? A. About one and one-half or one and three-quarters inches high.

Mr. Watson: That is all.

JOHN SAADI. 375

376 *Harry H. Hollander*

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMEN COMPANY,
Plaintiff,

vs.

MODERN PEN COMPANY,
Defendant.

377 Testimony taken for final hearing, before A. M. Parkins, Notary Public in and for the District of Columbia, at her office, Room 516 Washington Loan & Trust Building, Washington, D. C., on January 18th, 1911, at 10:30 A. M., pursuant to the annexed notice.

Appearances:

Samuel S. Watson, Esq., for Plaintiff.
Alexander S. Bacon, Esq., for Defendant.

HARRY H. HOLLANDER, a witness produced on behalf of the plaintiff, being first duly sworn deposes and says as follows:

378 Q1. You are an attorney and counselor at law? A. Yes.

Q2. Residing and practising in the City of Washington, District of Columbia? A. Yes, sir.

Q3. You were the attorney of record for Mr. John Saadi in a case in equity in the Supreme Court of the District of Columbia, in which the L. E. Waterman Company of New York was the plaintiff, were you not? A. Yes, sir.

Q4. You gave your testimony in that case? A. Yes, sir.

Q5. I show you a letter and ask if you received that letter in due course of mail? A. Yes, sir.

By Mr. Bacon: I object to that answer on the ground that it is privileged. A letter from a client cannot be tes-

tified concerning without the consent of the client.

By Mr. Watson: Counsel for plaintiff states on the record that the letter identified by the witness was produced at the taking of testimony in the case of L. E. Waterman Co. vs. John Saadi, in the Supreme Court of the District of Columbia (Complainant's Exhibit No. 14), and is a part of the court records in that suit, and therefore cannot be offered in evidence in this case. Counsel for plaintiff states that he has made application to the Court to release this exhibit, and the Court refuses. Counsel for plaintiff therefore asks the Examiner to make a true copy of this letter and include it in the deposition now being taken, and asks that the said copy be marked "Plaintiff's Exhibit 17." 380

By Mr. Bacon: Defendant's counsel states that this exhibit is not in an action between the parties hereto, and was not properly an exhibit in the Washington action, and was produced in that action without the consent of the witness' client, which client is now represented by myself in this matter; and on behalf of A. A. Waterman & Co. I object to the introduction of the letter on the ground that it was a privileged communication between attorney and client.

Q6. You testified in the Saadi case that you were the attorney for the Modern Pen Co. and A. A. Waterman & Co., of New York, and were protecting their interests in that case, did you not? A. I don't remember testifying exactly like that. I did testify that I was the attorney for the Modern Pen Co. and the A. A. Waterman Co., both of New York, but I don't think I testified that I was their attorney in that case, referring to the case of L. E. Waterman vs. Saadi. 381

Q7. Did you have any correspondence with Alexander S. Bacon, of New York, regarding the Saadi case? A. I think I did.

Q8. When? A. The date I don't remember.

Q9. Was it before the case went to final hearing? A. I think it was.

Q10. Was it before testimony in the case had been concluded? A. I think it was.

Q11. Do you consider the letter which I have just shown you, and which has been marked "Plaintiff's Exhibit 17," a retainer or employment of you as attorney or counsel for the Modern Pen Co.?

Br. Mr. Bacon: Objected to, as the letter speaks for itself, and is not the letter of the Modern Pen Co.

By Mr. Watson: Counsel for plaintiff objects to the remarks of defendant's counsel as an attempt to prompt the witness.

383 A. I do not.

Q12. Do you consider the letter, "Plaintiff's Exhibit 17," a retainer or employment of you as attorney or counsel for the A. A. Waterman Co.?

By Mr. Bacon: Objected to as the letter speaks for itself.

A. I do not.

Q13. Did you have other correspondence relating to the Saadi case, besides "Plaintiff's Exhibit 17," with the Modern Pen Co. or A. A. Waterman & Co. of New York? A. I think I did; I don't just remember at this time. I think I did.

Q14. Was that correspondence prior or subsequent to the re-
384 ceipt of the letter "Plaintiff's Exhibit 17"? A. I think I had correspondence both before and subsequent. Still I am not sure at this time.

Q15. Were you at any time prior to the beginning of the Saadi suit employed as attorney or counsel for the Modern Pen Co.? A. I think not.

Q16. Don't you know that you were not? A. I am pretty sure not.

Q17. Did you not say on your previous examination, in answer to that identical question, "No, sir"? A. I don't exactly remember at this time, but I don't think I was of counsel prior to that suit.

Q18. In any matter whatsoever? A. No, sir.

Q19. And you never were employed as counsel or attorney for A. A. Waterman & Co. prior to the Saadi suit? A. No.

Q20. In your deposition in the Saadi case, in your answer to the following question, namely: "Do you consider the letter (Complainant's Exhibit No. 14) a retainer or employment of you as attorney or counsel for A. A. Waterman & Co.?" Did you make the following answer: "I do, taken in connection with other correspondence." A. I made that answer, yes, sir.

Q21. And did you in your previous testimony in the Saadi case, in answer to the following question, namely: "The letter (Complainant's Exhibit No. 14) to which you have referred in your 386
last answer purports to emanate from A. A. Waterman & Co. and not from the Modern Pen Co. Do you claim the privilege on the ground that you are attorney for the Modern Pen Co?" Did you make the following answer: "Yes, sir." A. I did.

By Mr. Watson: Counsel for plaintiff offers in evidence a certified copy of the decree pa sed down by Judge Stafford in the Saadi case, filed December 5, 1910, and asks the Examiner to mark it "Plaintiff's Exhibit 18."

By Mr. Bacon: Objected to as irrelevant, immaterial and incompetent and not binding in any way upon the defendant.

Q22. You saw Mr. Bacon, attorney for the defendant, this morning before coming to testify, did you not? A. Yes, sir. 387

Q23. Did you see Mr. Bacon prior to the entering of the decree of Judge Stafford, Plaintiff's Exhibit 18? A. I did not.

Q24. Were you in correspondence with Mr. Bacon regarding the Saadi case prior to Dec. 5th, 1910? A. Yes.

Q25. Have you letters which Mr. Bacon wrote you at that time? A. I have no letters with me this morning.

Q26. I asked if you had them in your possession? A. I don't know Mr. Watson.

Q27. Don't you keep your letters? A. I usually do. I made no effort to look them up. I don't know whether I have or not.

388 *Harry H. Hollander*

Q28. Will you look them up and produce them this afternoon at this hearing?

By Mr. Bacon: I object to an adjournment of this hearing, on the ground that there has been no subpoena to produce letters.

A. I cannot reply to this request.

Q29. Why? A. I have other engagements for one thing; secondly, there has been no proper demand made upon me for the production of these letters, if letters I have.

By Mr. Bacon: I object further on the ground that they
389 are confidential communications.

Q30. Do you refuse to produce them because they are confidential communications from your client, or your client's attorney? A. I most assuredly do.

Q31. You put your objection entirely on that ground? A. Well, at this time I not only put it upon that ground, but upon the further reason that there has been no proper legal demand made upon me for the production of those letters.

Q32. The demand is made in accordance with the Rules of Practice in Equity of the United States, and the subpoena calls for your attendance to testify here today. The notice which was served upon defendant's counsel, and pursuant to which he is present, calls for such adjournments as may be found convenient?
390 A. I adhere to my objections.

Q33. Am I to understand then that you refuse, without the ruling of Court, to produce the letters which you have testified you have received from Mr. Bacon relating to the Saadi case? A. I have no letters from Col. Bacon, so far as I can remember, that refer exclusively to the Saadi case. I have correspondence with Col. Bacon which I consider privileged communications.

Q34. Because you and Mr. Bacon are representing the same clients? A. Yes.

Q35. And these clients are the Modern Pen Co. and A. A. Waterman & Co.? A. Exactly.

391

Q36. Do you know what became of the bill from the Modern Pen Co. to Mr. John Saadi, dated Dec. 4, 1909, which was introduced in evidence and marked "Complainant's Exhibit No. 15" in the Saadi case? A. It was turned over to the Examiner at the hearing of that testimony and I have not seen it since.

Q37. The original does not appear to have been filed in the case of the Examiner. He includes in his return a copy. I show you his minutes as filed in the Court and ask you if that is your recollection of the bill which was "Complainant's Exhibit No. 15" in the Saadi case?

By Mr. Bacon: Objected to as irrelevant, immaterial and incompetent in this case. Proceedings in that case are not binding upon this defendant.

392

A. It looks like the original, but I would not attempt to say that those figures are correct, for the reason that it has been many months since this testimony was taken.

Q38. The copy I have shown you is the certified Court record copy from the files of the Supreme Court of the District of Columbia, is it not? A. It bears the file stamp of the Clerk of that Court, and the testimony appears to be signed by Robert L. Miller, the Examiner in that cause.

Q39. Don't you know Mr. Miller's signature? A. I do not.

By Mr. Watson: The Examiner is asked to make a true copy of this Exhibit ("Complainant's Exhibit No. 15" in the Saadi case) and plaintiff offers the same in evidence and asks that the Examiner mark it "Plaintiff's Exhibit 19" in this case.

393

By Mr. Bacon: Objected to as irrelevant, immaterial and incompetent.

CROSS-EXAMINATION by Mr. Bacon:

XQ40. Did you present to Judge Stafford a copy of the opinion of the United States Circuit Court of Appeals in New York in this action? A. I did.

394 *Harry H. Hollander*

XQ41. And on receipt of that opinion did he strike out of the decree as presented to him the paragraph which related to A. A. Waterman & Co.?

By Mr. Watson: Objected to as the decree shows for itself.

A. He did.

XQ42. Did the plaintiff's attorney in the Saadi case present to Judge Stafford a decree like the one finally entered, with the exception that it contained a separate paragraph prohibiting Mr. Saadi from selling pens bearing the imprint A. A. Waterman & Co.?

395

By Mr. Watson: Objected to as entirely immaterial, as the decree speaks for itself.

A. He did.

XQ43. And that is the paragraph that Judge Stafford struck out?

By Mr. Watson: Same objection.

A. That is the same paragraph.

XQ44. And that paragraph does not appear in the decree, so that the decree does not speak for itself as to this matter?

By Mr. Watson: Same objection.

396 A. That is correct.

XQ45. How long have you known the L. E. Waterman pen, or known of it?

By Mr. Watson: Objected to as not proper cross-examination.

A. For a number of years.

XQ46. How long have you known the A. A. Waterman & Co. pen?

By Mr. Watson: Same objection.

A. Also for a number of years.

XQ47. Do you know how people in general designate these pens?

By Mr. Watson: Same objection.

A. I have heard people speak of Waterman's pen, and at different times refer by that name to the L. E. Waterman pen, and have also had them refer to the pen of A. A. Waterman & Co.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ48. The decree in the Saadi case contains the following, doesn't it "That the defendant, John Saadi, has violated and infringed the rights of the complainant by advertising, representing, selling and dealing in fountain pens (not of complainant's manufacture) bearing the names and marks 'Royal Ideal Pen,' 'A. A. Waterman & Co.' which names and marks are an imitation and simulation and infringement of complainant's said trademarks and trade names." A. It does. 398

Examination of witness closed.

(Sgd.) HARRY H. HOLLANDER.

Subscribed and sworn to before me this 23rd day of January, 1911.

(Sgd.) A. M. PARKINS, 399
(Seal.) Notary Public, D. C.

400 **Plaintiff's Exhibit 17.**

Plaintiff's Exhibit 17, referred to in the deposition of Mr. Hollander.

Isaac E. Chapman. W. L. Chapman.

A. A. WATERMAN & CO.,

Cable Makers of New York

Modern and

Address Fountain Pens London.

New York, U. S. A.

401

Modern Pen London.
New York.

22 Thames St., Cor. Greenwich.

THE MODERN PEN COMPANY,
Sole Selling Agent.

New York, Jan. 13th, 1910.

Mr. Harry H. Hollander,
Columbian Building,
416 Fifth Street, N. W.,
402 Washington, D. C.

Dear Sir:

Your favor of the 11th inst. at hand and contents noted.

We have considered the matter of paying you for defending the injunction suit of L. E. Waterman Co. against John Saadi, and are of the opinion that the matter is not one of great importance to us, as the L. E. Waterman Co. could continue to bring these suits against our customers in any part of the United States, until we restrained them by an action here in New York from so doing. However, it goes against our grain to let a

decree be entered which affects us, without opposing it, at least to some extent.

Under the circumstances, if you would care to protect our interests, we would be pleased to pay you $100 for so doing, and in case you are successful in preventing them from getting a decree which would in any way interfere with our customer, Saadi, selling and advertising goods made by A. A. Waterman & Co., and so marked, we will pay you $250.

The complaint of the L. E. Waterman Co. in this action says nothing about the use of the name "A. A. Waterman & Co.," and we presume they left it out intentionally, on account of the injunction which they secured in New York, which expressly gave 404
A. A. Waterman & Co. the right to use such name; and we do not see how a judge, with a copy of that decision before him, can give them a broader decree than that received in New York.

In regard to the statement made by Mr. Watson as to A. A. Waterman having engaged in business, and going from one place to another, organizing copartnerships and corporations, we would state that Mr. A. A. Waterman came to New York some ten or twelve years ago and formed a copartnership, which was reorganized in 1905, but from which he withdrew in 1906 on account of not being able to agree with his partners. Since then his actions have been very detrimental to the New York firm of A. A. Waterman & Co.

We have been engaged in legitimate business selling our product to our customers distinctly as A. A. Waterman & Co. and 405
never in any way trying to give them to understand that they were made by the L. E. Waterman Co., or tried in any way to imitate their products or trade-marks.

Our principal pen is our "Modern Self Filling" pen, and there is no other firm in business which makes a pen that in any way corresponds to this. We claim that our pens are far superior to any other fountain pens made.

We have also been exporting our products from the United States to foreign countries.

When Mr. A. A. Waterman withdrew, the fact was advertised in the newspapers, according to law, and there is no reason why

406 *Charles G. Allen*

we should be made to suffer for Mr. Waterman's actions since withdrawing from the firm.

Yours very truly,

A. A. WATERMAN & CO.

IEC/RE.

CHARLES G. ALLEN, a witness produced on behalf of the plaintiff, being first duly sworn, deposes and says in answer to interrogatories by Mr. Samuel S. Watson, as follows:

407 Q1. Please state your name, residence and occupation? A. Charles G. Allen; attorney at law; residence, Florence Court, Washington, D. C.

Q2. At my request did you go with me to Mr. Saadi's store on Ninth Street, in Washington, and purchase a fountain pen? A. I did.

Q3. When was that, about? A. It was during the month of November, 1909.

Q4. When you purchased that pen, what did you ask for?

By Mr. Bacon: Objected to as irrelevant, immaterial and incompetent, and not binding upon this defendant.

A. For a Waterman Fountain Pen.

408 Q5. And what did you get? A. I got a pen, the trade name of which I am not exactly sure, so that I guess my answer will have to contain a description of it.

Q6. What was on the fountain pen? A. The pen, as nearly as I can remember, bore the name "Waterman" coupled with the initials "A. A." and it bore the imprint of a globe or sphere with a tracing of a continent on it.

Q7. Did it bear any other words that you remember? A. My impression is that it bore the words "Royal Ideal Fountain Pen."

Q8. Were there signs displayed in connection with these pens in Mr. Saadi's window and store? A. There were.

409

Q9. And did they contain the name "Waterman" and "A. A. Waterman & Co."? A. They contained the name "Waterman," but whether "A. A. Waterman & Co." I am unable to state.

Q10. Did these signs contain the words "Royal Ideal Pen"? A. They did.

Q11. How many of these pens were displayed in the window and store of Mr. Saadi, so far as you could see? A. Mr. Saadi's store was divided by a central aisle opposite to the central entrance in the front, and the north half of the store, together with the north window was apparently devoted to the business of handling these pens.

410

Q12. There were a large quantity of them in the window? A. To the best of my recollection, in the north window nothing but pens were displayed.

Q13. And a long case of these pens in the store on the north side? A. Yes.

Q14. Were quite a number of these pens shown you on which you saw these same words? A. Yes.

Q15. How long have you known about Waterman pens? A. Upwards of twenty years.

Q16. And what do you understand that I mean when I say "Waterman Pens"? A. I understand you to mean the Waterman Ideal Pen.

Mr. Bacon: Objected to as leading.

411

Q17. How long have you used Waterman Ideal Fountain Pens? A. For upwards of twenty years.

Q18. And when did it first come to your knowledge that there was another concern that was using the name of Waterman in the fountain pen business? A. About five years ago.

Q19. And how did you come to know about that? A. By conversation with yourself at Cape May, New Jersey.

CROSS-EXAMINATION by Mr. Bacon:

XQ20. You went to Mr. Saadi's store with Mr. Watson, at his request? A. Yes.

412

XQ21. For the express purpose of buying a pen to be used in evidence? A. Yes.

XQ22. He furnished the money? A. Yes.

XQ23. How many pens did you examine openly with your own eyes to see what was on them? A. I should say five or six.

XQ24. What part of them did you examine? A. The barrel, if that is the technical term.

XQ25. Did you examine any other part than the barrel; that is, what is called the pen point? A. I do not think so.

XQ26. Do I understand you to swear that you found on the barrel of any pen the words "Royal Ideal Pen," and also the
413 words "A. A. Waterman & Co."? A. I stated that as my impression, and will swear that is my impression at this date.

XQ27. But if I should tell you that no such pen holder or barrel was ever manufactured, would you then wish to revise that impression?

By Mr. Watson: Objected to as entirely improper in form and immaterial in substance.

A. My impression is so distinct that I should be inclined to think you were mistaken.

XQ28. Are you willing to swear that you saw in the window more than fifty or sixty pens, all told? A. I am.

XQ29. How many did you see? A. The exact number, of
414 course, it is impossible for me to state, but there were several trays of pens of different grades and bearing different price marks displayed in the window, and I should say that a tray would hold at least a dozen pens, and there were probably a dozen trays.

XQ30. Will you swear that you saw more than one show case of pens on the inside?

By Mr. Watson: Objected to as entirely immaterial.

A. The show case which I saw on the inside extended from very near the front of the store to very near the back. Whether it constituted more than one show case I am unable to state.

XQ31. How many feet would that be? A. Possibly twelve.

XQ32. From whom did you buy this pen? A. From a clerk in the store.

XQ33. Did you have any conversation with Mr. Saadi in relation to it? A. I personally did not.

XQ34. Did Mr. Watson? A. He did.

XQ35. In your presence? A. He did.

XQ36. What did he say? A. He said to Mr. Saadi, in substance, that he was the attorney for the Waterman Pen Company; that the pen that Mr. Saadi was selling was an infringement of the Waterman Pen Company's trade-mark, and cautioned Mr. Saadi to desist, warning him if he failed to do so he would be compelled to bring suit. 416

XQ37. He left no written notice of any sort? A. He gave Mr. Saadi his professional card.

XQ38. That was all? A. As far as any written notice was concerned, that was all.

XQ39. Are you willing to swear what kind of pens were displayed in the window outside? A. Not having been afforded the opportunity of examining the pens in the window, I cannot do so.

XQ40. Then you do not know whether they were L. E. Waterman pens, A. A. Waterman pens, Royal Ideal pens, Parker pens, or any other kind? A. Except as announced by the advertisement on the window, I have no means of knowing what the window contained, other than that it contained fountain pens. 417

XQ41. Would you make the same answer, referring to the pens in the show case in the store? A. I would not.

XQ42. What would your answer be in relation to such question? A. That in the course of my selection of the pen which I bought I had occasion to examine in my own hands half a dozen or more of the pens from the show case, and that they were not L. E. Waterman Fountain Pens.

XQ43. Do you know what pens they were that you examined? A. As I have previously stated they bore the imprint of a globe and, according to the best of my recollection, were labelled A. A. Waterman or A. A. Waterman & Co.'s pens, and, I am not

certain on this point, but my impression is that the words "Royal Ideal" were used in connection with the trade designation.

XQ44. On the barrel? A. On the barrel.

XQ45. And A. A. Waterman & Co. was on the barrel too? A. I have stated this as to the best of my recollection and cannot be positive after this lapse of time.

XQ46. Did you get a box with this pen? A. I did.

XQ47. And a guarantee on the inside of the box? A. I do not recall a guarantee.

XQ48. Do you not remember that inside of this box was a written guarantee of the Royal Ideal Pen, and stating that the pen point was the manufacture of A. A. Waterman & Co.? A.
419 I do not recall such a guarantee.

XQ49. Are you willing to say that any pens on those counters, other than the five or six that you examined, were of any particular make? A. Certainly not.

XQ50. The prices that you saw indicated on these pens ranged from 25 cents up to several dollars? A. I would not say that there were any as cheap, but some of them were possibly several dollars; that is to say, three or possibly four dollars.

XQ51. Did not some of the signs indicate that these pens were sold for less than a dollar? A. I cannot recall.

XQ52. You have heard the A. A. Waterman pen spoken of very often, have you not? A. During the last five years.

XQ55. You have often heard it spoken of as the Waterman
420 Pen? A. Yes.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ54. By whom? A. Chiefly in advertising matter.

RDQ55. By advertisements of dealers here in Washington? A. It was spoken of as the Waterman Pen in Mr. Saadi's establishment and, if I recall aright, the drug store known as Ograms at 13th and Pennsylvania Avenue, at one time embarked on the sale of these pens.

RDQ56. Did you ever personally hear anybody refer to the A. A. Waterman pen as the Waterman Pen, except in Mr.

Saadi's store? A. I have been shown A. A. Waterman pens by individuals who owned them, and who referred to them, through ignorance possibly, as the Waterman Pen.

RDQ57. Did not all of these people say to you that they had been deceived by purchasing a pen marked A. A. Waterman, thinking it was a pen of the L. E. Waterman concern? A. No, they did not say that.

RDQ58. Then, as I understand your testimony, when you say that people have referred to the A. A. Waterman pen as the Waterman Pen you refer to the representations made in Mr. Saadi's store and by the advertisements of dealers in Washington, and by certain persons who have referred to the A. A. 422
Waterman pen in ignorance as the Waterman Pen? A. Yes.

RDQ59. In connection with the fountain pens displayed in Mr. Saadi's window, were there signs displayed also? A. I have stated that there were signs on the window. As to whether there were signs on the trays of pens or not I can't state.

RDQ60. Did the signs on the window display the name "A. A. Waterman" and "Royal Ideal Pens" in connection with the words "Fountain Pens"? A. It displayed the word or name "Waterman," but whether coupled with the initials "A. A." or not, I am unable to state. It also displayed the words "Royal" and "Ideal."

RDQ61. And the name A. A. Waterman was on the pens shown you in Mr. Saadi's store, on some part of the pen, was it 423
not? A. According to my recollection it was on the barrel of the pen.

RDQ62. Might it not have been on the pen point? A. Possibly.

RDQ63. How long have you known of the Waterman Ideal Fountain Pen as being generally called the "Waterman Pen," or the "Waterman Fountain Pen"? A. Since 1886 or 1887.

RDQ64. And during the period since that time has the Waterman Ideal Fountain Pen, made by the L. E. Waterman Company, been generally known as the "Waterman Pen" or the "Waterman Fountain Pen"? A. Yes.

424 *Charles G. Allen*

RDQ65. And has the L. E. Waterman Company, who makes these pens, been generally known as the Waterman Pen Company? A. It has.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ66. You are an attorney; not in business? A. Yes.

RXQ67. Never have been in the pen business A. No.

RXQ68. Never have had occasion to know very much about fountain pens? A. I have had occasion to know a good deal about fountain pens.

425 RXQ69. Attorney for the L. E. Waterman Co.? A. No, never.

RXQ70. In what way? A. I have several friends who are members of the patent bar and have often discussed the merits of different fountain pens with them, and I am in a small measure posted on them.

RXQ71. Did any of these men ever tell you that the L. E. Waterman Co. did not manufacture their pens at all, that they got the barrels from one party and the pen points from various parties, and merely assembled the parts

By Mr. Watson: Objected to as entirely immaterial, if true; and notice is given now that the attorney for plaintiff will move the Court to strike out this irrelevant testi-
426 mony and have the same taxed against defendant. Furthermore, counsel for plaintiff gives notice that he will introduce in evidence the decisions of the courts of the State of New York to show that the L. E. Waterman Co. are manufacturers of its goods, in an action wherein that question was expressly in issue.

By. Mr. Bacon: Attorney for defendant states that that decision was in 1898, and that the evidence of the plaintiff's own manager is to the effect that plaintiff do not manufacture the parts of their pens, but that they have even brought pen points from this defendant.

By Mr. Watson: Absolutely false.

A. No.

RXQ72. Have you ever heard the A. A. Waterman pen discussed? A. I have.

RXQ73. Has anybody ever told you that they manufactured every part of their pens from the very best materials and by the highest priced workmen to be found?

By Mr. Watson: Same objection and notice.

A. No.

RXQ74. Are you willing to swear that when you went into Mr. Saadi's store you were not shown two kinds of pens, one bearing the imprint of A. A. Waterman & Co., and the other bearing the imprint of the Royal Ideal Pen? A. I am; while 428
my recollection is not absolutely clear as to the exact imprint which the pens bore I would swear that they were all of the same manufacture.

RXQ75. Did you examine the barrel of each pen of the half dozen that you looked at? A. I did.

RXQ76. Were they all of the same imprint? A. They were.

RXQ77. Are you willing to swear that the clerk who sold you this pen did not state that the pen point was made by A. A. Waterman & Co.? A. I am, for the reason that when I asked the clerk for a Waterman Pen, and asked him if he was sure that that was a Waterman Pen, he at once referred us to Mr. Saadi.

RXQ78. And what did Mr. Saadi say? A. In my direct-examination I have given the substance of the greater part of 429
Mr. Saadi's conversation with Mr. Watson. Mr. Saadi only added to that that he was protected in the use of a device which marked those pens by a registered trade-mark of which, I think, he undertook to give Mr. Watson the registry number.

RXQ79. Did he say that that registered trade-mark included the name A. A. Waterman & Co.? A. He did not.

RXQ80. Did he tell you of what his trade-mark consisted? A. He did not.

RXQ81. Are you absolutely sure that this conversation related to A. A. Waterman & Co., and not exclusively to the trade-mark the "Royal Ideal Pen"? A. I must assume that Mr. Wat-

430 *Charles G. Allen*

son and Mr. Saadi were talking of the same subject-matter. Mr. Watson was talking with reference to the pens which had been shown us bearing the word "Waterman."

RXQ82. And you are sure that those pens bore the name "Waterman" on the barrel? A. I have not as yet made that statement.

RXQ83. And you did not examine the pen points to see what name they bore? A. I do not recall examining the pen points, and do not think I did examine them.

RXQ84. And if you saw the words "A. A. Waterman & Co." on these pens at all you saw the words on the barrel?

431 By Mr. Watson: This line of testimony is objected to as entirely immaterial, and notice is given that motion will be made to strike it out and have the costs taxed against the defendant. Plaintiff's counsel also wishes to bring to the attention of the Court the fact that it is immaterial whether the name "A. A. Waterman" appeared on the barrel or on the pen point, as long as it did appear on one or the other. Further objection is made that the witness has already covered this ground five or six times and stated very carefully that he is not sure whether it was on the barrel or on the pen point.

By Mr. Bacon: Objected to as prompting the witness, and not in accordance with the witness' testimony at this
432 hearing.

A. I presume that to be the fact.

RXQ85. And on the same barrel were the words "Royal Ideal Pen"? A. I have previously stated that my recollection as to the marking of the barrels is somewhat vague, but coupled with the advertising matter displayed on the window I was under the impression that the pens were advertised as Waterman's or A. A. Waterman's and as Royal Ideal Pens. Whether all of these marks were used on the barrels of the pens shown me, or only part of them, I am unable to state.

433

RXQ86. Is it not a fact that the advertisement "Royal Ideal Pen" on the window was on an entirely different part of the window from the words "A. A. Waterman"? A. It is not.

RXQ87. Were they near together? A. Yes.

RXQ88. How far apart?

By Mr. Watson: Objected to as entirely immaterial.

A. The show window in question is a small one, the advertisements being displayed on the front pane of the same, and it necessary follows that the different portions of the advertisement must have been near together and could not have been far apart.

434

RXQ89. Were they on the same side of the window? A. Yes.

RXQ90. Are you sure of that A. I am.

RXQ91. Was it not the fact that you asked for an Ideal pen when you entered this store? A. I asked for a Waterman Pen, meaning a Waterman Ideal Pen. Whether I used the word "Ideal" or not I cannot state.

RXQ92. And when you asked for a Waterman Pen is it not a fact that you were shown a pen with the name A. A. Waterman & Co. on the barrel? A. I have previously and repeatedly stated my impression of what the barrels of those pens bore in the way of advertising or descriptive matter.

RXQ93. Kindly do it again?

435

By Mr. Watson: Objected to as an abuse of the practice and rules of this Court.

A. As previously stated, the pens which I examined bore the word "Waterman," either coupled with or without the initials "A. A.," the words "Royal Ideal," either one or both of these designations.

Examination of witness closed.

(Sgd.) CHARLES G. ALLEN.

Subscribed and sworn to before me this 24th day of January, 1911.

(Sgd.) A. M. PARKINS,

(Seal.) Notary Public, D. C.

436 **Plaintiff's Exhibit 19.**

MODERN PEN COMPANY.

Sole Selling Agent For
A. A. WATERMAN & Co.

Modern Self-Filling
(Picture of Pen) And Middle Joint
FOUNTAIN PENS, GOLD PENS And
Lincoln Fountain Pens

125 Greenwich Street—22 Thames Street
New York,
437 Dec. 4. 09.

Sold to J. Saadi,
602 9th St., N. W.,
Washington, D. C.
4 Jan. 1910.

X. Coll.

144	Imprinted Royal		14	4 50	Dz. Net		54	00
144			12	6 00	"		72	00
144	Ideal		11	4 50	"		54	00
36			15	9 00	"		27	00
24	Mod.		20	2 00	50	48	24	00
12	Feeds	11	1 00	Dz. Net			1	00
438 12	"	12	1 00	"			1	00
12	"	14	1 00	"			1	00
12	"	15	1 00	"			1	00
1	Mod Clips	B	2 75	"			2	75
	24 Mah Trays.							

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.
} In Equity.

New York, March 13, 1911. 440

Met pursuant to adjournment.

Present.
S. S. Watson, for Plaintiff.
Alexander S. Bacon, for Defendant.

VAN BRUNT TANDY, a witness called on behalf of the complainant, being duly sworn, testifies as follows:

Direct-examination by Mr. Watson:

Q1. Please state your full name? A. Van Brunt Tandy.
Q2. Your residence? A. 165 Seventeenth Street, Brooklyn.
Q3. What is your business? A. Manufacturing stationer. 441
Q4. With what concern are you now? A. John M. Bulwinkle.
Q5. Where is his place of business? A. 413 Fulton Street, Brooklyn, N. Y.
Q6. Does the concern you are with, Mr. Bulwinkle, handle and sell fountain pens? A. Yes.
Q7. How long has that been a fact? A. It has been a fact ever since the L. E. Waterman pens were manufactured. They sold the first pens.
Q8. To your personal knowledge how long has that been a fact? A. Sixteen years minus one month.

442 *Van Brunt Tandy*

Q9. Have you been connected with him those sixteen years? A. Yes, I never have been out a week until the past week.

Q10. During that period have you been familiar with the fountain pens which were carried and sold by Mr. Bulwinkle? A. I have, yes.

Q11. Have you been during this period, or any part of it, familiar with the fountain pens that were generally on the market? A. Yes.

Q12. During what period has Mr. Bulwinkle been handling and selling Waterman Ideal Fountain Pens? A. Ever since they were first made.

443 Q13. To your personal knowledge how long? A. Ever since I have been in his employ.

Q14. By what name, or names, are the pens manufactured by the L. E. Waterman Company generally known by the trade and public? A. The Waterman pen, Waterman Ideal Pen, L. E. Waterman Pen. That is practiaclly all.

Q15. How long have the goods of the L. E. Waterman Company to your personal knowledge been generally known by the trade and public, by these names that you have mentioned? A. As long as I have been in business; sixteen years minus one month.

Q16. What is the name by which the fountain pens manufactured by the L. E. Waterman Company are generally called for by your customers? A. Waterman Fountain Pen.

444 Q17. How long has that been a fact to your knowledge? A. Ever since I have been with Mr. Bulwinkle, or in business.

Q18. Has it come to your notice that there has been any confusion in the trade on account of the use of the word or name Waterman by A. A. Waterman & Company of this city? A. Yes, considerable.

Q19. In what way? A. A party would come in our store and ask for Waterman Pens and sometimes would have one that they wanted to be exchanged for a new one and immediately upon presenting it I would tell the party that that pen was never bought at our place. "That is funny," they would say, "It is a

Waterman Pen." "Yes, but it is not a genuine Waterman Pen and it is not worth one-half what the L. E. Waterman Pen is worth, therefore we cannot do anything for you," and they get up and go out the door and slam it.

Q20. The confusion that you speak of comes from the use of the name Waterman, does it not? A. Yes.

Q21. From the marking of the goods? A. Yes.

Q22. Did anything ever come to your attention from your customers that made you believe or think that a customer asking for a Waterman Pen or a Waterman Fountain Pen expected to receive a fountain pen made by A. A. Waterman & Co.

Mr. Bacon: Objected to as immaterial, irrelevant, incompetent and leading. 446

A. No, sir.

CROSS-EXAMINATION by Mr. Bacon:

XQ23. You have never sold any A. A. Waterman & Co. goods? A. No, sir; I never handled anything but L. E. Waterman Pens in my experience in that store.

XQ24. No pen of any make whatever except L. E. Waterman? A. No pen of any make whatever.

XQ25. You are a salesman? A. I am general manager of that store.

XQ26. Then you have never dealt in other pens? A. No. 447

XQ27. And you have never had occasion to compare them with other pens? A. Considerably, yes.

XQ28. You never had anything to do with manufacturing pens? A. No.

XQ29. You would not call yourself an expert in fountain pens if you never had anything to do with their manufacture? A. There would be very few that you could call experts in fountain pens.

XQ30. You do not call yourself an expert? A. I call myself as knowing as much about a fountain pen as anybody does that never manufactured them.

448 *Van Brunt Tandy*

XQ31. That is from selling one pen only? A. More than one—thousands.

XQ32. One kind of pen? A. Yes, one kind of pen only.

XQ33. Do you mean to say you could pick up an A. A. Waterman pen and a L. E. Waterman pen and say by examination that one was worth only one-half as much as the other? A. Yes, I could.

XQ34. How could you do it? A. Because, in the beginning, the pen has not got quality in any line.

XQ35. How do you know? A. Because the A. A. Waterman people never had any money to go in business to produce anything that was equal to the L. E. Waterman.

449

XQ36. That is your reason for it? A. That is my reason. It never gave satisfaction.

XQ37. If you never dealt in them how do you know? A. Because I know the man who made the A. A. Waterman pen originally.

XQ38. Who was that? A. Mr. Gibson.

XQ39. And that is the reason you judge of the pen today? A. No, I had one presented to me when they were first made, by him, in our store.

XQ40. That was in 1898? A. Yes. I would not say it was the year exactly.

XQ41. And your judgment is founded upon that fact? A. Yes, and the quantities that come to us for repairs and com-

450 parison.

XQ42. Suppose I should tell you that the L. E. Waterman Company do not manufacture pens at all, that they simply collect the parts from different people, would that change your judgment in any way? A. No, because I know different.

XQ43. You know that is not so? A. I know that is not so.

XQ44. As you understand, the L. E. Waterman Company manufacture holders? A. They do, sir.

XQ45. As you understand, they manufacture the pen points? A. They do, sir.

XQ46. How did you get that impression? A. They have a factory in the City of Brooklyn where they are made.

XQ47. In the City of Brooklyn? A. Yes.

XQ48. Whereabouts—in Williamsburg? A. No, it is in New York, on the water's edge. I had an invitation to go to it. I would not say it is Brooklyn but it is on the water's edge.

XQ49. You know that they manufacture their holders there? A. Yes. I think it is Van Dine Street.

XQ50. And they manufacture the holders over there? A. They do.

XQ51. And they manufacture all their pen points over there? A. They do.

XQ52. And they always have, for many years? A. No, not always.

452

XQ53. How many years? A. Off hand, for the last eight or ten years.

XQ54. Before that how did they get their pens? A. The parts were made then. The pens were made by Aikin-Lambert of New York.

XQ55. Always? A. Always, to my knowledge they were.

XQ56. Is it not a fact that you don't know anything about them except that some of the L. E. Waterman Company have told you? A. I think experience is worth something in this world.

XQ57. Is it not a fact that you do not know anything about what you have been speaking of except what they have told you? A. No, I do not say so.

453

XQ58. If I should tell you that the evidence in this case indicates that they have never made a penholder in their existence, would you believe me? A. No.

XQ59. You would say I was telling what was not true? A. I would take my own mind for it, knowing they make pens today, both the pen points and penholders.

XQ60. If I should tell you that right up to the present time they are in the habit of buying pen points from other people you would not believe it? A. No, I would not.

XQ61. Even though I should tell you that the evidence in this case has been that they do?

454 *Van Brunt Tandy*

Mr. Watson: Counsel for complainant has quietly set here and listened to these misleading questions, questions that have nothing whatever to do with the issues in this case, to see how far counsel would go in putting a lot of irrelevant matter on this record.

Counsel for complainant gives notice that he will move at final hearing to strike out all of these irrelevant questions and testimony and ask that the Court tax the cost of taking the deposition against the defendant.

The Court's attention is particularly directed to the misleading character of the form of the questions and
455 the attempt to trap the witness.

XQ62. And even though I should tell you that the evidence in this case has been that they do, you would still say that they manufacture everything themselves? A. I do.

XQ63. Upon what do you base that assertion? A. I base that on the fact that I can go at present to their factory and see them made.

XQ64. You have seen them making penholders there? A. Yes.

XQ65. You are sure of that? A. I will take you over to the store and show you parts that come from there.

XQ66. Are you sure that you have with your own eyes seen penholders made in the plaintiff's factory in New York? A.
456 No, sir; I am not, not with my own eyes.

XQ67. When people come into your store with an L. E. Waterman Pen they call that the Waterman Pen, don't they? A. Yes.

XQ68. And anybody that has an A. A. Waterman Pen would call it a Waterman Pen? A. Yes.

XQ69. That is usual with everybody, is it not? A. Yes, that is usual.

XQ70. And a great many would come into your store with an A. A. Waterman Pen and think that is the only Waterman Pen in the world, wouldn't they? A. Yes.

XQ71. Another man would come in with an L. E. Waterman Pen and think that was the only Waterman Pen in the world? A. Yes.

XQ72. And not know that there were two different ones? A. Yes.

XQ73. Then the people who own the A. A. Waterman & Company's pen were just as much confused as those who owned the L. E. Waterman pen? A. No, sir.

XQ74. Why not, if they thought they were the only one in the world? A. Because the Waterman Pen of A. A. Waterman & Company was put on the market for sale under Waterman's name and the people that put it on the market never had any 458
capital to put it there and Mr. Gibson thought that the name of L. E. Waterman would put it on the market and from that he received most of his revenue.

XQ75. Don't you know that Mr. Gibson died way back in 1898 or 1899? A. Yes, I know it very well. I can remember Gibson long before he thought of fountain pens.

XQ76. Have you known anything about the partners in the business since 1899? A. Nothing at all.

XQ77. And you don't know anything about the A. A. Waterman & Company since 1898 or 1899? A. No.

XQ78. You do not know Mr. Geyer? A. I never saw him.

XQ79. You never knew Mr. Fraser? A. No.

XQ80. You do not know Mr. Isaac E. Chapman? A. No.

XQ81. Or William L. Chapman? A. No. 459

XQ82. You have never been to the A. A. Waterman & Company's factory? A. No.

XQ83. In fact you have not known anything about A. A. Waterman since 1898, when Mr. Gibson was there? A. I knew them by the pens which came around, trying to be sold.

XQ84. Trying to be sold by whom? A. By A. A. Waterman or the Modern Pen Company people. For us to put on our shelves and sell.

XQ85. And when they came to you, they told you they were A. A. Waterman, did they? A. Yes, sir.

XQ86. They never palmed them off as L. E. Waterman pens? A. No.

XQ87. Never palmed them off even as Waterman Pens? A. No.

XQ88. They always called them the A. A. Waterman Pen? A. Yes.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ89. When people brought in an A. A. Waterman Pen and called it a Waterman Pen were any of these people under the impression, or did they give you to understand that they were under the impression that these were Waterman Ideal Fountain Pens? A. Many times.

461

RDQ90. And when they called a pen a Waterman Pen they thought they had an L. E. Waterman pen? A. They certainly did.

RDQ91. And did they give you evidence of that fact in any way? A. Yes, saying that they had been done by being shown an A. A. Waterman pen when they wanted an L. E. Waterman Ideal Pen.

RDQ92. When they wanted a genuine Waterman Pen they had been sold an A. A. Waterman Pen? A. Yes.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ93. Can you give the name of any one person who ever came to your store with an A. A. Waterman Pen and told you they thought that it was an Ideal Pen? A. At present, no.

462

RXQ94. Has there been such a man within the last year? A. Yes.

RXQ95. Can you give his name? A. No, sir.

RXQ96. How many such within the last year? A. I should say hundreds.

RXQ97. Hundreds have come in with A. A. Waterman Pens? A. Yes.

RXQ98. And told you that they thought they were Ideal Pens? A. Yes.

RXQ99. And yet you cannot give the name of one man? A. No, sir; because I don't keep the order book in the store or attend to the fountain pen department and repairs.

RXQ100. They do not come to you personally? A. They do come to me personally and I hand them over to the order clerk.

RXQ101. Do you mean to say that everybody that comes in there with an A. A. Waterman Pen has told you that they thought they had a Waterman Ideal Pen? A. No.

RXQ102. How many pens have you had for repair in the last year that were made by the A. A. Waterman Company? A. I never figured them. 464

RXQ103. About how many? A. I should say from 200 to 300.

RXQ104. Within one year? A. Yes.

RXQ105. And how many L. E. Waterman Pens to be repaired? A. I should say about in the neighborhood of 200.

RXQ106. What do you do with them when they come into your shop? A. We repair the pen, no matter whose make it is, that comes into our shop.

RXQ107. Do you repair them yourself? A. No.

RXQ108. Where do you send them? A. Send them out to the repair man, if it is any pen but the L. E. Waterman Pen.

RXQ109. Who is the repair man? A. Kimball.

RXQ110. Where? A. His place of business is 397 Fulton 465 Street.

RXQ111. New York or Brooklyn? A. Brooklyn.

RXQ113. He does all of your repairing outside of L. E. Waterman Pens? A. At the present time, yes.

RXQ114. And for how long? A. For the last six months.

RXQ115. Who did it before that? A. Hambler & Co.

RXQ116. Where are they? A. They used to be at the corner of Fulton Street and Broadway, New York City.

RXQ117. Are they in business now? A. No, sir; they failed, went out of business.

466 *Van Brunt Tandy*

RXQ118. How many A. A. Waterman Pens have you turned over to Kimball in the last six months to be repaired? A. Possibly in the neighborhood of 100 or more.

RXQ119. Are you willing to swear how many of those one hundred that have come in within the last six months and told you that they thought that they owned a Waterman Ideal Pen? A. I never kept any account and the numbers I could not say.

RXQ120. You cannot give the name of one person? A. At present, no.

RXQ121. Can you ascertain the name of one person? A. I certainly can.

467 RXQ122. Have you got it on your books? A. No.

RXQ123. Will you at the next hearing give us the names of any persons who have so thought? A. Of course the conversation would not be in our books, how they have been buying A. A. Waterman Pens for L. E. Watermans but I could tell you the parties who we repaired A. A. Waterman Pens for.

RXQ124. That is not an answer to my question. I asked you if you could give me from your books or from refreshing your recollection in any way, the name of one person who within the last six months has brought in an A. A. Waterman Pen to be repaired and told you that he thought it was a Waterman Ideal? A. No.

RXQ125. Have you any way of finding out the name of any such person? A. No.

468 RXQ126. I repeat the question as to any time preceding the last six months. A. No, sir.

RXQ127. Then there is no way on earth by means of which you can find out the name of any person that has ever told you, or anybody in your store, that he thought an A. A. Waterman Pen was an L. E. Waterman Pen? A. No.

Deposition closed.

Signature waived.

Adjourned to Tuesday, March 14, 1911, at 2 P. M.

UNITED STATES CIRCUIT COURT, 469

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.
} In Equity.

New York, March 23, 1911.

Testimony taken on behalf of the complainant at final hearing before Frederic M. Adams, an examiner of this Court, at the office of Watson & Raymond, 10 Wall Street, New York, the 23rd day of March, 1911, at 11 o'clock in the forenoon, pursuant to notice hereto annexed. 470

Appearances:

Samuel S. Watson, for the Complainant.
Alexander S. Bacon, for the Defendant.

Mr. Watson: Counsel for plaintiff gives notice on the record to counsel for the defendant to produce all the letters, telegrams, invoices, orders and other communications, sent or received by the Modern Pen Company to or from John Saadi of Washington, D. C., in reference to the sale of fountain pens by the defendant, or A. A. Waterman & Co. of New York, to John Saadi. The letters and other communications already produced, as counsel for plaintiff is informed, are not all of the communications. The earliest communication produced by the defendant is dated December 7, 1909, and plaintiff's counsel is informed that there were earlier communications regarding the sale of Royal Ideal Pens to John Saadi, which passed between the defendant or A. A. Waterman & Co. and John Saadi. 471

472 *Robert C. Liddell*

Mr. Bacon: The attorney for the defendant states that all the letters have been produced except two short ones, later than those already produced, in which said short letters there was nothing except a request to pay the balance due. I will try to find those two letters.

Mr. Watson: Plaintiff's counsel states that John Saadi has testified to an invoice dated December 4, 1909, and also testified as to receiving pens prior to that time, which plaintiff's counsel believes were covered by other invoices.

473 ROBERT C. LIDDELL, a witness of full age, produced on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, place of residence and occupation? A. Robert C. Liddell; residence, Montclair Heights, New Jersey; manager of the retail department of L. E. Waterman Company.

Q2. Where is the retail department of the L. E. Waterman Company located? A. At 173 Broadway, New York City.

Q3. How long have you been connected with the L. E. Waterman Company? A. Fifteen years.

Q4. How long have you been in their retail department? A. Twelve years.

474 Q5. How long have you been the manager of their retail department? A. Twelve years.

Q6. Have any evidences come to your attention of confusion in the minds of the public between the pens manufactured and sold by the plaintiff and those marked A. A. Waterman & Co., New York, N. Y.

Mr. Bacon: Objected to as irrelevant, immaterial and incompetent; confusion itself being no evidence of fraud or any impropriety.

A. Yes.

Q7. How does this evidence of confusion come to your attention? A. Pens marked A. A. Waterman are presented for repairs or exchange at our place of business and when we enlighten them on the fact that they are not our manufacture they seem surprised.

Q8. Do these people that present these pens to you marked A. A. Waterman & Company for exchange or repair, indicate to you in any way that they believe that they are Waterman Ideal Fountain Pens? A. Yes.

Q9. In what way? A. They very frequently point to the name Waterman on the barrel which they seem to think indicates that it is our manufacture.

476

Q10. Do these instances occur frequently or how often? A. I would say frequently, every day.

Q11. Do these people tell you who they are or where they bought the pens? A. Yes, some of them do.

Q12. Do you wait on customers yourself at the store of the L. E. Waterman Company? A. I do, yes.

Q13. Can you give me any instances of persons that have presented pens marked A. A. Waterman & Co., and have indicated to you that they were confused and believed that the pens which they had were Waterman Ideal Fountain Pens? A. I cannot say offhand but I have a few memorandums to that effect.

Q14. Would those memorandums refresh your recollection as to the instances when people have given you their names? A. Yes.

477

Q15. Will you please refer to some of those memorandums and tell me some of the instances that have come to your attention? A. On February 9th, 1911, Mr. William George Kirkland, of 346 Fulton Street, Jamaica, Long Island, called and presented an A. A. Waterman pen for repair and upon informing him that it was not of our manufacture he immediately traded in, stating that he did not want any but of our own goods.

Q16. Did he state to you that he believed that he had a genuine Waterman Ideal Fountain Pen? A. He stated to me that he believed it to be a genuine Waterman pen.

478 *Robert C. Liddell*

Q17. Did he tell you where he bought the pen that he presented to you? A. Yes, he bought it on 42nd Street, three doors away from the Children's Hospital. He bought it on January 18th, 1911.

Q18. Where is the Children's Hospital on 42nd Street; do you know? A. I do not know myself, no.

Q19. What did he come into the store for? A. He brought the pen in to receive attention; it was not working properly.

Q20. Can you give me any other instance where anybody has brought an A. A. Waterman & Co. fountain pen into the store and indicated to you confusion, or that he had a Waterman's
479 Ideal Fountain Pen? A. Yes, Mr. Otto Loca, 39 East 12th Street, New York City. He purchased an A. A. Waterman pen thinking it was our manufacture. When purchasing it he asked for a Waterman.

Q21. Did he say where he bought it? A. He bought it on Broadway, between 12th and 13th Street, New York.

Q22. Did he say when he bought it? A. He just said "A short time ago."

Q23. How did he happen to come into the store? A. For the repair of the pen, when the pen was not working properly.

Q24. Were these two pens that you have referred to as A. A. Waterman & Co., pens marked "A. A. Waterman & Co., New York"? A. Yes.

Q25. Did either of these gentlemen give you any idea how
480 they happened to come to the plaintiff at 173 Broadway, New York? A. Yes, they thought it was our manufacture when they brought it in for repair.

Q26. Can you give me any further instance of this confusion among your customers? A. I have another one here, Mr. William John Richardson, Chief Engineer of the Steam Ship Gloria de Larrinago.

Q27. When did he come in the store—recently? A. He was in the store May 18, 1910.

Q28. How did he tell you he happened to go to 173 Broadway, New York? A. He is a gentleman that calls at 173 Broadway, our store, every trip that he makes to New York, to re-

plenish his supply of ink. He has done that for some time back; and this A. A. Waterman pen which he had in his possession he took to be of our manufacture because it had the name "Waterman" on it and he knew our pen by the name of Waterman only.

Q29. How do your customers usually ask for plaintiff's goods in your store, as far as it comes to your personal knowledge? A. Waterman fountain pen.

Q30. How long has that been the fact to your knowledge? A. Ever since I have been manager of the department.

Q31. In all of these instances that you have mentioned, the name and time and the other facts you have stated regarding 482
these persons were given you by the customers themselves? A. Yes, by the customers themselves.

Q32. Without going into details, will you please name some of the other instances that have come to your attention in your department and state in a brief way the circumstances as far as they are in your knowledge? A. Very frequently pens of the A. A. Waterman manufacture are brought to the clerks for repair. Some of the new clerks, not knowing what to do with them, refer them to me for instructions, which was to state that the pen was not of our manufacture and we had no parts to supply for them, so could not repair them.

Q33. Please give the names of any other cases of confusion that have been handled in your department? A. Mrs. M. L. 483
Tibbits, 2417 Valentine Avenue, Bronx, New York, called at the store January 26th, 1911, and presented an A. A. Waterman pen for repair which she had purchased six months prior to her call, and thought it to be of our manufacture; she purchased it in a store near Lexington Avenue on 42nd Street about opposite the Grand Central Station.

Q34. Any others? A. Mr. Joseph von Liskowsky, St. Paul, Minnesota, called at the store May 16th, 1910, with an A. A. Waterman pen for repair, which was purchased from Wilson & Co., of St. Paul, Minnesota; he thought it of our manufacture.

Mr. E. Garry, 124 East 59th Street, New York called on February 19th, 1911, with an A. A. Waterman pen for repair

thinking it of our manufacture; purchased it from Jackson's Stationery Store, 3rd Avenue and 69th Street, New York.

Mr. D. Butterfield, Kasson, Minnesota stated that he purchased an A. A. Waterman pen from Hibbard, Spencer & Bartlett Co., wholesale hardware dealers in Chicago, Ill., thinking it of our manufacture. He did not like the pen point and called upon us to exchange it. He stated, when he was informed that it was not of our manufacture, that he would return it to the dealer from whom he had purchased it.

Mr. G. G. Gibson, 2217 Washington Street, St. Louis, Missouri, of the Gibson Furniture Company, purchased an A. A. Waterman pen for his wife and thought it our make.

485 Q35. What did he want done with his pen? A. He brought it for repair.

Mr. J. Dardeck, 110 East 56th Street, New York, presented a pen for repair at our retail store thinking it of our manufacture. He promised to send the address of the dealer whom he bought it from.

Mr. McSorley, 974 Rogers Place, Bronx, New York City, called on May 11th, 1910; bought within the past month an A. A. Waterman pen thinking it of our manufacture, in a store on Grand Street, New York, about two blocks east of Second Avenue.

Q36. Is it a fact that most of the people that present A. A. Waterman & Co. pens to you telling you that they think it is

486 of plaintiff's manufacture, refuse to give their names or address or any data about it? A. The majority of those people who present those pens do not care to give the name but as a rule will state where they purchased and remark that they will return to the dealer whom they purchased it from.

Q37. Do you have any cases where people get very angry over the matter? A. Yes, we have had cases where people become very indignant when we told them that the pen which was stamped A. A. Waterman was not of our manufacture.

Q38. And these people that become indignant, do they ever give you their names and addresses? A. These names that I have mentioned are some of the people who have become in-

dignant on learning that it was not of our manufacture, the pen which they presented for repair.

Q39. In what proportion, if you can say, are you able to get the name and address of these people who state that they have been deceived? A. A very slight proportion.

Q40. And it is a fact that you have not been trying to get their names until recently? A. Yes.

Q41. During the last few months? A. During the last few months, yes.

CROSS-EXAMINATION by Mr. Bacon:

488

XQ42. How many months do you mean by the words "during the last few months"? A. From six to eight months.

XQ43. Are these names that you have given all the names you have been able to get during that time, that indicated confusion? A. Yes.

XQ44. These are all? A. These are all, yes.

XQ45. During this time there were only three names who said that the pen sold to them had been sold as a Waterman pen; is not that true? A. Yes.

XQ46. And all of the others simply said that they thought they had a Waterman pen? A. They thought they had a Waterman pen, yes.

XQ47. And they did not know the difference between L. E. Waterman and A. A. Waterman? A. No, they did not know the difference. 489

XQ48. That is all there was to it, was it not; they brought A. A. Waterman pens in and thought there was not but one kind of Waterman? A. No.

XQ49. What was it? A. They brought an A. A. Waterman pen in thinking it of our manufacture and asked us to repair it.

XQ50. Why do you say, "thinking it was our manufacture"? A. Because they brought it to our establishment.

XQ51. That is the only reason, is it not? A. No, that is not the only reason, because the name Waterman on it indicated to them that it was our manufacture.

490 *Robert C. Liddell*

XQ52. They saw the sign Waterman out on Broadway and went in with a Waterman pen to have it repaired?

Mr. Watson: Counsel for complainant objects to this as calling for the mental attitude of the customer.

XQ53. Is that about all there was to it? A. No, sir they brought in an A. A. Waterman pen thinking it of our manufacture.

XQ54. Well, thinking is an attitude of the mind. What did they say? A. "Please repair this Waterman pen."

XQ55. What else did they say? A. When I told them it was
491 not of our manufacture they said, "Yes it is, there is the name Waterman on the barrel."

XQ56. And they showed you the name of A. A. Waterman & Co.? A. They showed us the name Waterman.

XQ57. You do not mean to say that the name Waterman was alone on the barrel? A. No, that they indicated or pointed to the name Waterman.

XQ58. Take up the first three names that you have given us; the first is William George Kirkland. State just what he said to you and what you said to him? A. He presented his pen and asked me if I would repair it and I told him we could not repair it, that it was not of our manufacture, and he stated that he had purchased it on 42nd Street and thought it was of our manufacture; he readily saw that he had been misled and
492 stated that he was in the habit of using the genuine Waterman Ideal pen and wished to get a genuine Waterman's Ideal pen and discard the one that he had and I told him that we were unable to repair that A. A. Waterman pen but we could help him out of his difficulty by making him an allowance for it, which he agreed to and stated, when we offered the allowance, that that was more than what it was really worth.

XQ59. Is that the substance of the whole conversation? A. Then he gave me his card which I have here and stated that he realized that that was misleading to the public and he would be willing to assist us at any time.

XQ60. You asked him for his card? A. No, sir.

XQ61. Did he tell you what the salesman had told him when he bought the pen? A. No, he did not state just what the salesman said.

XQ62. Then you made an exchange with him? A. Yes.

XQ63. And you made a good profit on the exchange didn't you? A. As far as the profit is concerned I do not know.

XQ64. What was the retail price of the pen that you sold him? A. As near as I can recollect it was a No. 12, a $2.50 pen.

XQ65. How much did you allow for the A. A. Waterman? A. 62 cents.

XQ66. Then you got $1.98 in cash from him? A. No, I got $1.88. 494

XQ67. I should have said $1.88; and you don't know how much that pen cost? A. No.

XQ68. You are not confided with any of those secrets? A. No.

XQ69. He did not have the name of the people who sold him this pen? A. No, he did not know the name; he merely gave the location.

XQ70. When did he make that purchase? A. A month or two before his call at our office.

XQ71. Tell us about Otto Loca, of 39 East 12th Street. Give us the exact conversation with him. A. That pen was brought in some time ago. My recollection of the conversation then is not very good. I can not state exactly what he did say. 495

XQ72. Can you tell when it was? A. It was in the fall some time; I cannot state the date.

XQ73. Of what year? A. 1910.

XQ74. Then you do not remember anything about that particular incident; simply that he brought in a pen for repair? A. That particular incident, I do not remember exactly his bringing the pen in for repair other than the memorandum that I made at the time he was in.

XQ75. Have you got the memorandum? A. Yes.

XQ76. May I see it? A. Yes (producing a paper.)

496

XQ77. Didn't he know the name of the party from whom he purchased it? A. No, he did not, as far as I can remember.

XQ78. You asked him for his name? A. I asked him for his name, yes.

XQ79. Give us the exact conversation with William John Richardson, Chief Engineer of the Steamship Gloria de Larrinago? A. Mr. William John Richardson called with an A. A. Waterman pen. He stated to me he instructed his second engineer to purchase him a Waterman pen while at Newport News, Virginia. This is a memorandum which I made at the time of his call. He was led to believe that an A. A. Waterman pen was of our manufacture.

497

XQ80. Who was led to believe? A. Mr. John Richardson.

XQ81. Who led him to believe that? A. Through his second engineer who purchased it as a Waterman pen.

XQ82. How do you know he did? A. From Mr. Richardson's statement.

XQ83. Then all you know is what Mr. Richardson told you about what another man told him? A. It is what Mr. Richardson told me.

XQ84. Yes, but he told you that another man told him that he supposed something or other? A. Mr. Richardson just told me the exact circumstances and how he came to obtain the A. A. Waterman pen when he thought he had a Waterman pen.

XQ85. What was the date of that? A. That was May 18th.

498

XQ86. Over ten months ago? A. Yes.

XQ87. How long had you been collecting this material at that time? A. I stated before, about eight or ten months.

XQ88. And now you are willing to state that it was ten months or more? A. From my memorandum, that proves it.

XQ89. Then these three names as I understand it are the only ones concerning whom you have memoranda and the conversation? A. These are the three that were willing to give their names in connection with the circumstances.

XQ90. And all the others that you have testified to related merely to confusion that was apparent from the fact that they came into 173 Broadway to have an A. A. Waterman pen re-

paired; is that right? A. They of course thought it was of our manufacture and brought it to us for repair.

XQ91. You cannot give the conversation with any one of these except the first three, can you? A. I don't remember the conversation, no.

XQ92. Of any one of them? A. I wait on too many people a day to remember that.

XQ93. You did not take a memorandum of the conversation except with these three? A. No, I did not keep a memorandum because I did not have the name and address of the person who was given.

XQ94. And up to within a very short time it has been your 500
habit when anybody came to 173 Broadway with an A. A. Waterman pen to repair to tell them that you could not repair it? A. That we could not repair it.

XQ95. And up to a short time ago you told them that there was no such firm as A. A. Waterman & Co., did you not? A. No.

XQ96. Have you not written letters to that effect? A. No.

XQ97. When pens have come in by mail to be repaired? A. I have never received any.

XQ98. You never received any by mail? A. No.

XQ99. That is not under your department? A. No.

XQ100. Are you willing to swear that you have never told anybody that came in with an A. A. Waterman pen for repair, 501
that there was no such firm as A. A. Waterman? A. Yes.

XQ101. Do you know whether or not your employees have told customers that? A. I feel certain that they have not, because I have instructed them differently.

XQ102. What was the occasion of your instructing them differently from that? A. Whenever an A. A. Waterman pen was presented for repair and they wished to know where to have it repaired we might refer them to 22 Thames Street.

XQ103. How long have you been doing that? A. Some years back.

XQ104. You are sure of that? A. Yes.

502 *Robert C. Liddell*

XQ105. You told some of these people that you had no parts to supply so that you could not repair their pens? A. Yes.

XQ106. Does that refer to all A. A. Waterman pens? A. Yes.

XQ107. Can you not repair any of those pens just as well as your own, excepting the self-filler? A. Only in one part; that would be the cap.

XQ108. Can they not supply any part of any one of A. A. Waterman's make except the self-filler? A. No, sir.

XQ109. Are you sure of that? A. Yes, I am sure that they have not got parts to supply for it.

503 XQ110. You do not have anything to do with the repairing department, do you? A. Not outside of the repairs that are brought over the sales counter.

XQ111. Then you turn them over to some other people to be repaired? A. All pens received over the retail counter are repaired in the repair department.

XQ112. Where is that? A. In the rear of the store.

XQ113. Are you in charge of that too? A. Yes.

XQ114. Then you are the manager there? A. Yes.

XQ115. And all repairs that come into 173 Broadway are repaired on the premises? A. All but a few that have to have parts made specially.

XQ116. How many pens do you take in per day for repair, on an average? A. On an average, a hundred pens a day.

504 XQ117. How many of them are L. E. Waterman pens? A. All but a few; there are a very few outside of the L. E. Waterman Company pens that we receive for repair.

XQ118. Of those few how many would be A. A. Waterman pens, in a day? A. We would not receive any A. A. Waterman pens for repair.

XQ119. How many A. A. Waterman pens, on an average, are presented to you for repair each day? A. The amount varies. Possibly from five to a dozen pens.

XQ120. Every day? A. Yes.

XQ121. And five or twelve times a day you refer people to 22 Thames Street? A. No, we sometimes make exchanges

for Waterman Ideal pens. The others generally ask where they can have them repaired and it is only when a person requires that information and asks for it that we give it.

XQ122. And you make an exchange if you can? A. Whenever we can, because it is a help to them, they consider it such.

XQ123. And you do not consider it a help to yourself to make that exchange? A. Yes, we do. It creates a sale of L. E. Waterman pens.

XQ124. Every time anybody bring in an A. A. Waterman pen for repair you try to make an exchange? A. We offer them an exchange.

XQ125. Can you give the name of any one of these persons whom you have named who was angry when he brought in an A. A. Waterman pen? A. I cannot recall just now. 506

XQ126. You have no memorandum of the impatience or anger of any one of them? A. No, I have not.

XQ127. Mr. Kirkland was not in a rage, was he, when he came in with his pen? A. No.

XQ128. Or Mr. Loca? A. I don't know whether Mr. Loca was or not.

XQ129. Or Mr. Richardson? A. Mr Richardson, no

XQ130. When does the steamship Gloria de Larrinago come to this port; do you know? A. I do not know.

XQ131. Do you know how often it comes here? A. No.

XQ132. Do you know on what line it is? A. It is the Barber Company. I don't know the line. 507

XQ133. Where does it sail? A. I don't know.

XQ134. You cannot give us any information as to where we can find Mr. Richardson? A. Only from the address I have given.

XQ135. But that steamship is on the high seas most of the time? A. You could probably find it from the Barber Company.

XQ136. What is their address? A. I don't know their address.

XQ137. A great many of the people that come in with A. A. Waterman & Co. pens know all about the difference between the two firms, don't they? A. There are a few.

508 *Robert C. Liddell*

XQ138. And the man who had an A. A. Waterman pen would be very apt to call his pen a Waterman pen, wouldn't he? A. Yes.

XQ139. And the man who had an L. E. Waterman pen would call his pen a Waterman pen? A. Yes.

XQ140. Every man calls his own pen by any name he pleases, doesn't he? A. By the name it is known by, Waterman.

XQ141. Is not the A. A. Waterman pen known as a Waterman pen too? A. Yes.

XQ142. The A. A. Waterman pen has been openly sold and advertised on the market for twelve or thirteen years, has it
509 not? A. I cannot state how long and I cannot state how openly.

XQ143. You have known of this pen being sold for the whole period during which you have been manager of the retail department of the plaintiff, have you not? A. Yes.

XQ144. And it was always sold under the name of A. A. Waterman & Co. pen? A. Yes.

XQ145. Some of them are called Modern and some Lincoln? A. Yes.

XQ146. Just as some of the L. E. Waterman pens are called Ideal? A. Yes.

XQ147. And some of the L. E. Waterman pens are not called Ideal? A. Yes.

XQ148. What other names do you have? A. Waterman, and
510 Waterman's.

XQ149. Do you mean to say that you sell any pen that bears no name except the word Waterman or Waterman's on it? A. Yes.

XQ150. Without any other name? A. Yes.

XQ151. What do they sell for? A. They vary in price.

XQ152. From what to what? A. From $2.50 up.

XQ153. Up to what? A. To $10, that is, plain goods. Then we have them in mounted goods from $10 up to $100.

XQ154. Do you mean to say that I could today buy a pen from you that would cost $10 or upwards, that had merely the name of Waterman on it, and not L. E. Waterman and not Ideal? A. Yes.

XQ155. Just the bare name Waterman? A. Yes.

XQ156. How many of those pens do you sell? A. That I cannot say. They are mixed right in with the other goods.

XQ157. Then you have some pens that are marked Waterman's Ideal Fountain Pen? A. Yes.

XQ158. And some that are simply marked Waterman pens? A. Yes.

XQ159. On both the barrel and the pen point? A. On the barrel only.

XQ160. How are the pen points marked? A. Waterman's Ideal Fountain Pen.

XQ161. Always? A. Or Waterman's Ideal. 512

XQ162. That is on the gold pen point? A. Yes.

XQ163. There are no gold pen points that are not marked Ideal? A. No.

XQ164. But you say there are some barrels that have no name on them except Waterman? A. Yes.

XQ165. Without any initials? A. Yes.

XQ166. And without any qualifying word? A. Yes.

XQ167. Is that true of plain pens without the fancy mountings on the holder? A. Yes.

XQ168. You have them on the plain pens as well as on the fancy pens? A. Yes.

XQ169. Can you give the name of any man who said that he had been deceived in the purchase of his pen? A. I cannot state that the word deceived was used, but the three names that 513
I have given you, in the conversation with me, proved that they had been deceived or misled.

XQ170. How did they so prove? A. By their actions and remarks. I do not recollect whether they stated deceived or misled.

XQ171. What were the remarks that proved that they had been misled or deceived? A. "Is not that a Waterman? I bought it for such."

XQ172. Did they tell you in any instance what the salesman had said to them when he sold them the pen? A. They may have stated, but I do not just recollect.

XQ173. Then you are not prepared to say, from anything that these three people said to you, that when the pen was sold to them, it was not sold as an A. A. Waterman & Co. pen? A. Their remark was that they thought it was a Waterman pen.

XQ174. They did not tell you what made them think so? A. The name Waterman on the barrel.

XQ175. That was all? A. And knowing our pens by the name Waterman.

XQ176. They did not say what anybody had told them when the pen was sold? A. They stated that they told them that it
515 was a Waterman pen.

XQ177. Have you said that before in your testimony? A. No.

XQ178. Are you willing to swear that Mr. Kirkland told you that when he bought the pen, the man from whom he bought it described it as a Waterman pen? A. He did not describe it as a Waterman pen, other than when Mr. Kirkland asked for a Waterman pen he presented that to him, or handed it to him.

XQ179. He did not tell you what the salesman said? A. No.

XQ180. Would these be your answers to similar questions in relation to Otto Loca? A. Yes, they are on the same trend.

XQ181. And Mr. Richardson? A. No.

XQ182. What would be the difference in relation to Mr. Richardson? A. Because Mr. Richardson had his second en-
516 gineer purchase the pen for him and instructed him to get a Waterman pen.

XQ183. And he had no first-hand information at all? A. No.

XQ184. What are the names of the different pens sold by the L. E. Waterman Company? A. Waterman, Waterman's Ideal; Waterman's Ideal Fountain Pen; Ideal and Waterman's.

XQ185. Have you given all the names? A. All that I can recollect.

XQ186. Have you never heard of the Remex pen? A. Yes, we make the Remex pen.

XQ187. You sell it, don't you? A. Yes.

XQ188. Then why didn't you mention that? A. I did not understand that your question took in all those.

XQ189. Now, take in everything? A. Besides what I have stated, we manufacture the Pen and Ink.

XQ190. What else? A. The Edson. That is all.

XQ191. Do those have the name Waterman on them anywhere? A. No, sir.

XQ192. What is the retail price of these various pens? A. The Remex pen is $1.25; The Pen and Ink pen $1.50; that is in plain holders; the Edson pen, small size, $2.

XQ193. Large size? A. I think there is another size at $3.

XQ194. What do the pens sell for that are marked Waterman, in various ways, plain handles? A. They vary in price from $2.50 up to $10. 518

XQ195. You have a $10 pen that is absolutely plain holder? A. Yes.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ196. Did Mr. Kirkland indicate to you that he did not know that he had an A. A. Waterman & Co. pen until you informed him? A. Yes, he did not know it was not of our manufacture until I informed him.

RDQ197. He told you that, did he, in substance? A. Yes.

RDQ198. That is true of the other names that you have mentioned of people that have informed you that they were deceived? A. In each instance they did not know that it was not our manufacture until I had informed them. 519

RDQ199. They told you that? A. Yes.

RDQ200. All of this list of names that you have given of people that have been deceived, all have been handled in your department, under you? A. Yes, all in my department, under me.

RDQ201. And in some instances you did not have personal conversation as to all the details with the customers themselves? A. In some instances I did not have conversation.

520 *Robert C. Liddell*

RDQ202. The matter was referred to you personally by some one under you? A. Yes, the matter was referred to me.

RDQ203. When people have called an A. A. Waterman pen a "Waterman" pen, have you ever known any instance where they called it a Waterman pen knowing that it was an A. A. Waterman pen? A. I do not remember any one in particular that I could name, but such a thing has been stated, that when we told them it was not our manufacture they stated that this was another Waterman.

RDQ204. Have you any personal knowledge that the A. A.
521 Waterman & Co. pen has been sold on the market, except that they have been brought into the store? A. No, outside of seeing a few in some stores.

RDQ205. Have you ever purchased an A. A. Waterman pen anywhere? A. No, sir.

RDQ206. Have you ever examined any of these pens in any store? A. No, sir.

RDQ207. Your information comes from seeing signs on windows, in stores? A. Yes, from seeing signs on the stores.

RDQ208. Do you recall seeing a sign in any store of which I now show you a photograph (handing witness a photograph)? A. As far as I can make out from the photograph, it looks to me like a photograph of a window on Broadway.

RDQ209. Whose store was it? A. Carey's Fountain pen
522 place.

RDQ210. Where is that store located? A. On Broadway, between John and Fulton Street.

RDQ211. Do you remember when you saw that sign in Carey's window? A. I don't remember exactly. I think it was along towards the summer months; possibly in June.

RDQ212. 1910? A. 1910.

Mr. Watson: The photograph referred to by the witness is offered in evidence and the examiner is asked to mark it Complainant's Exhibit No. 29.

Mr. Bacon: Objected to as irrelevant, immaterial, incompetent, not properly proven; this witness does not

know anything except what he sees from the photograph itself; and Mr. Carey is in no way connected with the defendant; he is a dealer who sells all sorts of pens.

Photograph is marked Complainant's Exhibit No. 29, March 23, 1911, F. M. A., Exr.

RDQ213. You testified that the plaintiff sells fountain pens bearing the name of Waterman's; how long has this been the practice of the L. E. Waterman Company? A. I cannot state just exactly how long.

RDQ214. To your personal knowledge? A. Years back.

RDQ215. Has it not been a fact ever since you can remember anything about it? A. Yes, since I can remember anything about it they have been sold, marked "Waterman's."

RDQ216. Have you ever seen any other fountain pen except those made and sold by the plaintiff, at any time, that were marked "Waterman's," without any other initial or distingishing mark? A. No, sir; these are the only pens that I have ever seen marked with "Waterman's" only.

RDQ217. At any time, anywhere? A. Yes.

RDQ218. Have you at any time anywhere seen any other fountain pens than those made and sold by the plaintiff, which had the name "Waterman," without any other distinguishing initials? A. No.

RDQ219. How long has the plaintiff been making and selling fountain pens with the name "Waterman" alone on them? A. As far back as I can remember.

RDQ220. What year would that be? A. About fifteen years ago.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ221. How many pens of all names do you sell per day on an average, at 173 Broadway?

Mr. Watson: Objected to as entirely immaterial to any issue in this case.

A. From 75 to 100 pens outright.

RXQ222. How many any other way? A. 500 or so.

RXQ223. 500 a day? A. Yes.

RXQ224. What do you mean by otherwise than outright? A. A great many exchanges. You asked the question, I understand, how many we handled during the day. I referred to sales and exchanges.

RXQ225. Do you sell for cash a hundred a day on an average, and sell on exchange about 400 a day? A. No, sir.

RXQ226. What would be the figure? A. The exchange that I have reference to is the Waterman Ideal pen being exchanged
527 for one more suitable to the user; an even exchange, without any cash difference.

RXQ227. How many exchanged a day with a cash difference? A. That varies considerably. It is hard to draw an average. Say twelve to twenty.

RXQ228. Then you sell outright about 100 of all makes and exchange, with a cash difference, about twelve or twenty each day? A. Yes.

RXQ229. The rest of these exchanges are one kind of Waterman pen for another? A. Yes.

RXQ230. Because a pen does not suit the person? A. Yes.

RXQ231. Of those 112 or 120 per day, how many, on an average, would be marked Waterman or Waterman's, without any other name or initial? A. I could not say, because the
528 stock is mixed up. Those that are marked Waterman's are in with the Waterman's Ideal, that are marked as such.

RXQ232. Don't you know from the number that come into the store about what proportion of that kind are sold?

Mr. Watson: Objected to as entirely immaterial to any issue in this case.

A. No, I do not know, because we do not replenish our stock individually. They are brought into our stock, classed in with the others.

RXQ233. Is it not a fact that a very, very small percentage of the pens that you sell are marked Waterman or Waterman's,

without any other initial or qualifying word? A. It is small, yes.

RXQ234. Less than one per cent? A. I could not answer the percentage.

RXQ235. Not one in a hundred are there? A. Yes, there are.

RXQ236. As many as that? A. Yes, I would expect it.

RXQ237. Have you ever had a sign out in your window to the effect that you repair all makes of pens? A. No, sir.

RXQ238. Never? A. Unless it was included in what we term a Pen Doctor's Cabinet, and in this cabinet are small cards giving the description of the injury to a pen and what is required 530
to put it in shape.

RXQ239. You are sure you never have had a sign in your window that you repaired all makes of pens? A. Yes.

RXQ240. Of these names that you have given us today, how many of them did you speak to personally? A. Three.

RXQ241. And that is all? A. Yes.

RXQ242. All the rest came to you through the reports of other employees? A. Yes.

RXQ243. And those three were Kirkland, Loca and Richardson? A. Yes.

RXQ244. And all that you have testified to in relation to these others was what somebody else told you? A. Yes.

RE-DIRECT EXAMINATION by Mr. Watson: 531

RDQ245. When you refer to the 112 or 120 pens that you say you sold, you refer to the retail store only? A. The retail store only.

RDQ246. You have not anything to do with the wholesaling of these pens? A. No, nothing.

RDQ247. The wholesale department is upstairs in the same building? A. Yes, the wholesale department is upstairs on the second floor in the same building.

Deposition closed.

532 *Victor C. Cormier*

Counsel for complainant produces the two medals concerning which the witness, William I. Ferris, testified, and which he was unable to locate at the time of giving his testimony and which he said were missing from the medals which were then produced.

VICTOR C. CORMIER, a witness called on behalf of the complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Watson:

533 Q1. Please state your name, place of residence and occupation? A. Victor C. Cormier; residence, 480 Devon Street, Arlington, New Jersey; lawyer, New York.

Q2. You are associated in the office of the counsel for the complainant in this action? A. Yes.

Q3. Did you visit the store of the Standard Drug Company in Cleveland in September, 1909? A. I did.

Q4. Will you please state what took place in that store in reference to your purchase of a fountain pen?

Mr. Bacon: Objected to as irrelevant, not connected in any way with the defendant and as hearsay.

534 A. I went into the store at 411 Euclid Avenue in the City of Cleveland, Ohio, of the Standard Drug Company. I went to the pen counter and asked the gentleman in charge for a Waterman's Ideal Fountain Pen. Several pens were shown me, but none of them were Waterman's Ideal Fountain Pen but bore the name A. A. Waterman. I asked the gentleman three times whether they were Waterman's Ideal Fountain Pens and he emphatically said yes. The lady behind the pen counter then waited on me, as the gentleman was engaged with other customers; there were quite a number of people in the store at the time, and at the pen counter and I asked her whether the pen that I had been shown was a Waterman's Ideal Fountain Pen. She said it was.

Q5. Did you purchase a pen from the store on that day? A. I did.

Q6. One of the pens that were shown you in answer to your inquiry for Waterman's Ideal Fountain Pen? A. Yes.

Q7. Will you produce that pen? (Witness produced a pen.)

The pen produced by the witness is offered in evidence and marked Complainant's Exhibit No. 30, March 23, 1911, F. M. A., Exr.

Q8. How much did you pay for that pen? A. $3.50.

Q9. When you made this inquiry for a Waterman's Ideal Fountain Pen did the man who waited on you tell you that there 536
was only one Waterman fountain pen or the Waterman fountain pen people made this pen only for them? A. That was in another store.

Q10. Where was that store? A. I think it was 2160 Prospect Avenue, Cleveland.

Q11. What was the sign on that store? A. Standard Drug Company.

Q12. That was not the store where you purchased the pen that you have produced here before us? A. No, it was not.

Q13. What were the signs that you saw on the store where you purchased the pen that you have produced here? A. Waterman's Fountain Pens $6 and $7. Middle joint; and Waterman Fountain Pens. That is as near as I can remember.

537

By Mr. Bacon:

Q14. Was this at Prospect Avenue? A. No, Euclid Avenue.

By Mr. Watson:

Q15. Of all the pens that were shown you in the Euclid Avenue store of the Standard Drug Company, Cleveland in answer to your inquiries for Waterman's Ideal Fountain Pen were any genuine Waterman's Ideal Fountain Pens shown you? A. No genuine Waterman's Ideal Fountain Pens were shown me.

538 *Victor C. Cormier*

CROSS-EXAMINATION by Mr. Bacon:

XQ16. When did you visit Cleveland on this errand? A. On the 20th of September, 1909.

XQ17. Do you know the names of the parties from whom you bought this pen? A. The Standard Drug Company, apparently.

XQ18. You do not know the name of the man that you talked to nor the name of the woman that you talked to? A. I do not.

XQ19. Is it a very large concern? A. Yes, I would consider
539 it fairly large.

XQ20. A great many clerks there? A. In the Drug Company Store?

XQ21. Yes? A. No, I did not take particular notice.

XQ22. Then what you have testified to relates to what was told to you by two persons whom you cannot identify in any way? A. I might identify them if I saw them.

XQ23. But you cannot describe them so that anybody could tell who they are? A. In a general way, yes.

XQ24. Did you buy of the woman or the man? A. The gentleman.

XQ25. Did you get a receipt? A. No, sir, I did not.

XQ26. Did not ask for any? A. No, sir.

XQ27. You went there for the purpose of getting this evi-
540 dence? A. Yes.

XQ28. And you are a lawyer? A. Yes.

XQ29. And you knew the desirability of corroborating your testimony? A. Yes.

XQ30. And yet you attempted to get no receipt? A. No, sir, I did not.

XQ31. And you did not ask for the names of the parties of whom you bought? A. No, I did not.

XQ32. And yet you as a lawyer went there for the express purpose of getting evidence in a suit? A. Yes.

XQ33. And did not take any precaution to corroborate what you have said? A. Yes, I did.

XQ34. What did you do? A. I went to the store No. 411 Euclid Avenue with one Alfred Burkhardt.

XQ35. Where does he live? A. He lives in Euclid, Ohio.

XQ36. Euclid is not Cleveland? A. No.

XQ37. Some other part of Ohio? A. It is a suburban town of Cleveland; it is near Cleveland.

XQ38. Did they have any signs of A. A. Waterman & Company pens out? A. None that I saw.

XQ40. You looked for them—you looked for signs? A. I did.

XQ41. What signs did you see? A. "Waterman's Fountain Pens, reduced" and "Waterman's Middle Joint Pens." That is as near as I can remember. 542

XQ42. When you went to Prospect Avenue what did you find there? A. In reference to what?

XQ43. In reference to the Waterman pens? A. Well, I asked him for a Waterman's Ideal Fountain Pen, the gentlemen in charge of the Standard Drug Company at Prospect Avenue, and he produced a Parker pen; and he made no representation as to that at all outside of the fact that it was a Parker pen. Then he produced a pen with the name of "Standard Drug Company" impressed on the barrel of the pen. I asked him if it was a Waterman Ideal Pen and he said "It is a Waterman." I asked him whether it was a Waterman Ideal Fountain Pen and he told me that there was only one Waterman; and I bought that pen. I paid $1.50 for it. I asked him whether it was a new pen or not. He said it was a new pen; and in conjunction with that he gave me a receipt guaranteeing the pen for one year and also guaranteeing it to be made by the Waterman people. 543

XQ44. Do you know who did actually make that pen? A. No, sir, I do not.

XQ45. Have you examined it so as to see if there is another name on it? A. Yes.

XQ46. There was nothing on it to indicate that it was made by the A. A. Waterman Company? A. I don't believe so, no, sir.

544 *Victor C. Cormier*

XQ47. Either on the pen point or the holder? A. I don't think so, no, sir.

XQ48. Did it have any other name there except "Standard Drug Company"? A. No, I don't believe it did. I can refresh my recollection by looking at the pen again. I have not seen the pen now for probably a year.

XQ49. You do not claim that that pen marked "Standard Drug Company" was ever manufactured by the A. A. Waterman Company, do you? A. I don't claim anything. I don't know.

XQ50. Did they tell you that that pen was made by the A. A. Waterman Company? A. No.

545 XQ51. Who did they say it was made by? A. By the Waterman "people" and that there was only one Waterman.

XQ52. Then the pen might have been made by the L. E. Waterman Company? A. It might for all I know, yes.

Deposition closed.

Signature waived.

Mr. Watson: Counsel for defendant has requested us to permit the examination of a witness on behalf of defendant on Monday, March 27th, 1911, and counsel for plaintiff has consented to this irregular proceeding on condition that the plaintiff's time to conclude its *prima facie*
546 evidence shall be extended for one day; it being understood that the witness to be examined by the defendant will only take one day.

Mr. Bacon: To this counsel for defendant agrees.

This examination is adjourned to Tuesday, March 28th, 1911, at the same place, at 11 o'clock in the forenoon.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.
} In Equity.

New York, March 28, 1911. 548

Testimony taken on behalf of the complainant at final hearing before Frederic M. Adams, an examiner of this Court, at the office of Watson & Raymond, 10 Wall Street, New York, the 28th day of March, 1911, at 11 o'clock in the forenoon, pursuant to notice hereto annexed.

Appearances:

Samuel S. Watson and W. B. Raymond, for Complainant.
Alexander S. Bacon, for Defendant.

EDWARD J. KASTNER, a witness of lawful age, called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Watson: 549

Q1. Please state your name, place of residence and occupation? A. Edward J. Kastner; residence, St. Lambert, Quebec; manager of the L. E. Waterman Company, Ltd.

Q2. Is that a Canadian corporation? A. It is.

Q3. Where is their place of business? A. Their head place of business is in Montreal.

Q4. What is their business? A. Manufacturers of fountain pens, and ink and selling pencils.

Q5. Do they sell fountain pens? A. Yes, they sell fountain pens.

Q6. And ink? A. And ink.

Q7. How long have you been connected with that company? A. Six years this spring.

Q8. What are your duties? A. I am the manager. I look after the selling of the pens and the selling force, and I handle correspondence, supervision, the inspection of the pens, the manufacturing of them.

Q9. What pens do you manufacture at the factory in Canada? A. We manufacture Waterman Ideal Fountain Pens; pens stamped Remex, Pen & Ink, and we make other pens under special brands for dealers.

551 Q10. Where is your store located in Montreal? A. 123 St. Francis Xavier Street.

Q11. You have charge of the store? A. I have charge of the store, yes. I am at the store most every day and have charge of it there.

Q12. Are you the head man there? A. Yes.

Q13. Prior to your connection with the L. E. Waterman Company, Ltd., with what concern were you connected? A. L. E. Waterman Company of New York.

Q14. How long were you connected with that store? A. Over twelve years.

Q15. So your connection with L. E. Waterman Company and the L. E. Waterman Company, Ltd., covers eighteen or nineteen years? A. Yes, that is right.

552 Q16. What were your duties while you were connected with L. E. Waterman Company, New York? A. I have worked in all the departments. My last duties were in the sales department. I started in assembling pens, repairing pens, and I worked under Mr. Ferris in adjusting pens, helping him in a general way.

Q17. You finally became Mr. Ferris' first assistant A. Yes.

Q18. What was Mr. Ferris' part of the business? A. Mr. Ferris had charge of the manufacture.

Q19. How long were you in the sales department of the L. E. Waterman Company? A. I suppose the last five or six years

that I was with the L. E. Waterman Company I was in the sales department. I used also to help Mr. Ferris then.

Q20. While in the sales department were you in the retail or in the wholesale department? A. I served in both retail and wholesale.

Q21. Were you at any time the manager of the wholesale department? A. I was.

Q22. When was that? A. The last few years that I was in New York with the L. E. Waterman Company.

Q23. Were you ever on the road as traveling salesman for the L. E. Waterman Company? A. Yes.

Q24. What period or periods were you on the road for the 545
L. E. Waterman Company? A. I made various trips, covering a number of years.

Q25. Did you make trips while you were manager of the wholesale department? A. Yes.

Q26. And prior to that? A. Yes.

Q27. What part of the country did you cover? A. I covered at different times most all of the United States, east of Denver.

Q28. Since you have been connected with the L. E. Waterman Company, Ltd., have you come in contact with the trade in other cities outside of Montreal? A. Yes.

Q29. What part of Canada have you traveled over as salesman for the L. E. Waterman Company, Ltd.? A. I have 555
traveled east of Toronto, taking in Ontario and Quebec. I have also been to the lower provinces, as far as Halifax.

Q30. Do you come in contact with dealers in Montreal? A. Yes.

Q31. Do you also wait on, or see, customers who come into the retail store in Montreal? A. Yes.

Q32. By what name do your customers, or the trade, usually call for Waterman Ideal Fountain Pens? A. Waterman, Waterman's, Ideal and Waterman's Ideal.

Q33. What is the name most commonly used in your experience? A. Waterman.

556 *Edward J. Kastner*

Q34. Does that apply to the retail trade, retail customers coming to the store? A. Yes.

Q35. By what name are these pens usually known among the trade so far as it has come to your knowledge? A. Waterman Fountain Pens.

Q36. How long has that been a fact? A. As long as I have been connected with the L. E. Waterman Company, or the L. E. Waterman Company, Ltd.

Q37. How long has it been a fact, or has it come to your personal knowledge, that customers purchasing at retail ask for these Waterman Ideal Fountain Pens as Waterman's pen or
557 Waterman pens? A. I can say for the full time I have been associated with the two companies.

Q38. The L. E. Waterman Company, Ltd., is a subsidiary company of the L. E. Waterman Company of New York? A. It is.

Q39. It transacts all the business connected with the manufacture and sale of Waterman's Ideal Fountain Pens in Canada? A. Yes.

Q40. Do you in your Canadian factory manufacture fountain pens complete? A. We do.

Q41. Do you manufacture the rubber that enters into the fountain pen? A. We buy the rubber on the mandrel.

Q42. What is a mandrel? A. A piece of metal. The mandrel is taken out. It is a tube like.

558 Q43. Where do the L. E. Waterman Company, Ltd., buy their rubber? A. Buy it from H. P. & E. Day, Seymour, Conn.

Q44. Do you know whether that is the same rubber or the same quality of rubber, from which the L. E. Waterman Company of New York, manufacture Waterman's Ideal Fountain Pens? A. Yes.

Q45. Do you receive this rubber in rough tubes? A. Yes, rough tubes, rods.

Q46 Rough tubes and rods? A. Yes.

Q47. And from the rough tubes and rods the fountain pen is made complete in the factory at St. Lambert? A. Yes.

Q48. Do you make gold pens in the factory at St. Lambert? A. We do.

X49. Do you adjust the parts in the factory ready for sale on the market? A. Yes.

Q50. How long have you been doing that? A. I think our factory has been in operation now about a year ago, January, when they finished it. It has been going about two years I think.

Q51. Where are these pens that you make at Montreal sold? A. They are sold throughout the Dominion of Canada. We sell some to foreign countries.

Q52. Do you sell any in the United States? A. No. 560

Q53. Who has the head charge of the manufacturing of these fountain pens in Canada? A. Mr. William I. Ferris.

Q54. And he is the same Mr. Ferris that has charge of the manufacturing of the fountain pens of the L. E. Waterman Company, New York? A. Yes.

Q55. How often does he come to the factory at Montreal? A. He comes up quite frequently, at least once a month; sometimes more often.

Q56. Do you know whether he has charge of the supervision of the manufacture of the rubber that goes into these pens? A. He has.

Q57. Do you have any evidences presented to you of confusion between the Waterman Ideal Fountain Pen and the fountain pens marked A. A. Waterman & Co., New York? A. I do. 561

Q58. And in what shape does that evidence come to your attention. A. I am often called to settle a dispute at the retail counter. Frequently a dealer will have an instance which comes to my attention. My salesmen will report regarding dealers that have purchased fountain pens stamped A. A. Waterman & Co., New York, Waterman's Ideal Fountain Pen.

Q59. Do you receive any correspondence showing confusion? A. I do.

Q60. Have you got any of that correspondence here that you can produce? A. I have.

562 *Edward J. Kastner*

Q61. Will you please produce it?

The witness produces paper.

Q62. The top letter, which I first take up of those you produce, is dated Port Hope, Canada, October 13, 1910, and addressed to L. E. Waterman Fountain Pen Co., Montreal, Quebec and purports to be signed by H. C. Wotherspoon.

Mr. Bacon: I object to all these letters as irrelevant.

Mr. Watson: I have not offered it in evidence.

Mr. Bacon: I object to putting on the record anything in relation to letters from third parties on the
563 ground that they are incompetent, irrelevant and immaterial, and in no way connected with the defendant.

Q62. (Continued.) And another letter signed by the same party addressed to L. E. Waterman Company, Ltd., Montreal, P. Q.?

Mr. Bacon: I make the same objection to putting on the record anything in relation to letters in Canada, as they do not relate to this plaintiff, the Canadian corporation being a different corporation.

Mr. Watson: Counsel for plaintiff calls the Court's attention to the irregular procedure on the part of defendant's counsel and desires to note on the record a
564 strong protest; that there is a proper time for objections on the record, and the middle of a question is not a proper time.

Q62. (Continued.) The second letter is dated Port Hope, Ontario, November 7th, 1910. Were these letters received by the L. E. Waterman Company, Ltd., in due course of mail and regular course of business? A. Yes.

Mr. Bacon: The same objections.

Q63. I note that the first letter referred to states that the writer is sending a fountain pen to you? A. Yes.

Q64. Did you receive the pen? A. Yes.

Mr. Bacon: I object to the question on the grounds already given, and I object to stating the contents of a letter not yet offered in evidence.

Q65. What kind of a fountain pen was it; what was the marking on the pen? A. Stamped A. A. Waterman & Co., New York.

The two letters produced by the witness are offered in evidence and marked Plaintiff's Exhibit 31.

Same objections.

Q66. The next letter that I take up is dated Melita, Man., August, 29, 1910, addressed to L. E. Waterman Company, Ltd., 566
and signed by L. S. Arnold; and annexed to the letter is a memoranda signed James Duncan. Did you receive this correspondence in due course of mail?

Same objections.

A. Yes.

Q67. What kind of a pen was sent in? A. The pen was stamped A. A. Waterman & Co., New York.

The letter and memoranda produced by the witness are offered in evidence and marked Plaintiff's Exhibit 32.

Mr. Bacon: Objected to as incompetent, irrelevant and immaterial, not binding on the defendant and relating to 567
an entirely different corporation from the plaintiff.

Q68. The next letter that I pick up of those that you produce is dated Lakefield, January 12, 1911, addressed to L. E. Waterman Company, Montreal, and signed A. M. Chalmers. Did you receive that letter in due course of mail? A. I did.

Q69. What kind of pens were they that were received with that letter? A. One of the pens was stamped A. A. Waterman & Co., New York; the other was stamped Waterman's Ideal Fountain Pen.

The letter produced by the witness is offered in evidence and marked Plaintiff's Exhibit 33.

568 *Edward J. Kastner*

Same objections.

Q70. The next letter that I pick up among those that you have produced is dated Hastings, September 20th, 1910, addressed to L. E. Waterman & Co., Ltd., Montreal, signed by Gibson & Huyck. Another letter from the same place has the same address signed by the same people dated November 11th, 1910. Another letter dated the same place November 29th, 1910, addressed to L. E. Waterman & Son, Montreal and signed by the same people. I ask you if you received those letters in due course of mail? A. We did.

Q71. What kind of pens were received in connection with
569 these letters? A. One pen was stamped A. A. Waterman & Co., New York and the other Waterman's Ideal.

The letters produced by the witness are offered in evidence and marked Plaintiff's Exhibit 34.

Same objections.

Q72. I show you a post card dated Louisberg, N. S., dated January 6th, 1911, signed Rev. John McKinnon, addressed to the L. E. Waterman Company, Ltd., and I ask you if you received that in due course of mail? A. I did.

The post card is offered in evidence and marked Plaintiff's Exhibit 35.

Same objections.

570

Q73. The next letter is one dated Wickham Quest, October 29th, 1909, addressed to L. E. Waterman Company, Montreal and signed F. Cormier? Did you receive that letter in due course of mail (handing witness paper)? A. Yes.

Q74. What was the pen that accompanied that letter? A. The pen was stamped A. A. Waterman & Co., New York.

Q75. Did you repair that pen? A. Yes.

Letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit 36.

Same objections.

Q76. The next letter is one dated Toronto, April 25, 1910, addressed to L. E. Waterman Company, Ltd., Montreal signed by R. J. Newton; I ask you if you received that letter in due course of mail (handing witness the paper)? A. Yes.

The letter identified by the witness is offered in evidence and the same is marked Plaintiff's Exhibit No. 37.

Same objections.

Q77. Was there anything in connection with that letter? A. A box was sent to me.

Q78. What kind of a box? A. A box stamped Waterman's Ideal Fountain Pens.

572

Q79. Will you produce the box that was sent you at the time? A. I will.

The Witness produces a box and the same is offered in evidence and marked Plaintiff's Exhibit No. 38.

Same objections.

Q80. Did this box bear the writing on it at the time you received it? A. It did.

Q81. Both on the top and the bottom? A. Yes.

Q82. The box bears on the top the words M. J. Bowden, Calgary, Ont., in writing? A. Yes.

Q83. And on the bottom "Wishing you all possible success, W. C. Bowden"? A. Yes.

Q84. You received the letter Plaintiff's Exhibit 37 and the box Plaintiff's Exhibit 38 through the mails in due course? A. Yes.

573

Q85. I show you a post card addressed to the Waterman Fountain Pen Co. of Montreal singed by the Neudorf Drug & Book Company. It is dated from Neudorf, Saskatchewan, February 25, 1911. Did you receive this post card in due course of mail? A. I did.

Q86. And the pen? A. Yes.

Q87. Is this the pen that you produce in connection with this post card (handing witness a pen)? A. Yes.

574 *Edward J. Kastner*

The post card is offered in evidence and marked Plaintiff's Exhibit 39.

Same objections.

The pen referred to is offered in evidence and marked Plaintiff's Exhibit 40.

Same objections.

Q88. What is the marking on the pen? A. A. A. Waterman & Co., New York.

Q89. The next letter is dated London, Ontario, December 28, 1909, addressed to L. E. Waterman, Montreal and signed Wilson D. Smyth. Did you receive that letter in due course? A.
575 Yes.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit 41.

Same objections.

Q90. I show you two letters, one dated September 15th, 1909, and the other dated September 27th, 1909, addressed to L. E. Waterman Company, Ltd., Montreal and signed by Rev. Edmond Carom. I ask you if you received those letters in due course of mail (handing witness papers)? A. I did.

The letters identified by the witness are offered in evidence and marked Plaintiff's Exhibit 42.

Same objections.

576

Q91. I show you a letter dated Winnepeg, January 9th, 1909, addressed to L. E. Waterman Company, Ltd., Montreal, signed W. R. & S. A. Campbell; also a post card dated Winnepeg, March 6th, 1909, addressed to L. E. Waterman & Co., Montreal, signed by W. R. & S. A. Campbell and ask you if you received those communications in due course of mail (handing witness papers)? A. I did.

Q92. Did you receive the pens mentioned in the letter of January 9th? A. I did.

Q93. How did you get them? A. I sent a messenger for them.

Q94. Where did you get them from? A. Granger Freres, Montreal.

Q95. In connection with the return of these pens did you receive a letter from Granger Freres? A. I did.

Q96. Is the letter that I now show you the letter that you received (handing witness the paper)? A. Yes.

Q97. Annexed to these letters I note a repair voucher. Is that the office memorandum regarding the transaction referred to in these letters? A. Yes.

The letter of January 9th and the post card of March 6th and the letter from Granger Freres and the repair voucher, are offered in evidence and marked Plaintiff's Exhibit No. 43. 578

Same objections.

Q98. Did you have any difficulty about receiving mail addressed to the Waterman Pen Company, Montreal from the post office in Montreal? A. Yes, we have had trouble.

Q99. Please relate the circumstances, what happened? A. We had customers complain of not receiving their orders, and through our travelers; attention called to the fact that repairs had not been returned. We made a complaint at the post office and the assistant postmaster at the post office in Montreal stated that he had received an order from Granger Freres & Co., authorizing them to get mail addressed "Waterman Company."

Q100. Who was that authorization from? 579

Mr. Bacon: That is objected to as hearsay and not binding on this defendant.

A. I was told the authoriaztion was from A. A. Waterman & Co., New York.

Q101. Did you finally succeed in getting certain letters that were addressed to the Waterman Fountain Pen Company and Waterman's Ideal Pen Company and Waterman Pen Company, and Waterman Company, etc., delivered to you? A. Yes, delivered to me.

580 *Edward J. Kastner*

Q102. Are these envelopes which you produce some of the letters that you were able to obtain under the circumstances you have just mentioned? A. Yes.

Bunch of envelopes produced by the witness is offered in evidence and marked Plaintiff's Exhibit 44A.

Same objections.

Q103. When did this transaction take place? A. Which transaction?

Q104. Referring to these envelopes that have been produced? A. The dates are on those envelopes there.

581 Mr. Bacon: 1909, all of them?

Q105. Some time during the year 1909? A. Yes.

Q106. Did you have satisfactory evidence that all those letters were intended for the L. E. Waterman Company, Ltd.?

Objected to.

A. Yes.

Q107. What was this? A. In some of the cases there were remittances for the account, that these parties owed us; and in other cases they had our own invoices inside.

Q108. Was there something in every case that tended to show that the correspondence was meant for your company? A. I had to show that before I got the letters.

Q109. To the satisfaction of the post office? A. Yes.

582 Q110. The letters were opened in the post office? A. Yes.

Q111. In these cases of the customers at the retail store who make statements to you that indicate confusion between a Waterman Ideal Fountain Pen and those stamped A. A. Waterman & Co., can you give us any instances where such confusion has come to your personal attention? A. Yes, there have been a good many instances. In quite a number of cases customers do not want to give their names.

Q112. Can you give any of the names of people who stated to you that they have been deceived or confused? A. Yes, I can give the name of J. H. Cantlin, St. Lambert, Canada; H. Bastien, employed at the Montreal Post Office; J. J. Nolan, 506 St. Paul Street, Montreal.

Q113. Are there any other persons whose names have been reported to you, that have been deceived? A. Yes, there have been a number of persons reported to me.

Q114. With whom you have not come in personal contact? A. Yes.

Q115. Give me some of these names and addresses?

Mr. Bacon: Objected to as not within the knowledge of this witness at all.

A. M. Langois, 314 St. Catherine Street, Montreal; Judge Delormier of Montreal, Court House; also a Mrs. Gratton of St. Catherine Street; Miss Dupreis, 957 St. Denis Street, Montreal. 584

Q116. Will you give Mrs. Gratton's address? A. 224 St. Catherine Street, West. There is another name here, M. Poulin, Bousecours Market. Also a Mr. Swan; M. S. Brown, Ltd., 53 St. Alexander Street, Montreal; Mr. Bouregois, Light, Heat and Power Company. That is address enough to find him. The office is on Craig Street.

Q117. Did you have any similar experiences when you were connected with the L. E. Waterman Company in New York? A. Yes.

Q118. What was their character? A. They were along the same line as these.

Q119. And all these people have some complaint to make about the pens marked A. A. Waterman & Co., New York which they bring in? A. Yes. 585

Q120. What is the general character of the complaint? A. That the pens do not write; that they leak.

Q121. Do you find in your experience any structural defect in any of these pens marked A. A. Waterman & Co., New York? A. They come in broken; the parties claim that they have had no hard usage; any pen that is made with a joint in the center, it makes it weak there, in a part that really should be strong; as anyone leaning up against a counter, the sharp point breaks off.

Q122. How about the fountain pens marked A. A. Waterman, New York, that have a rubber sack, the so called self-filling

586 *Edward J. Kastner*

pen? A. There are a good many come back. The little knob at the end is broken off and they complain that they screwed it off in attempting to fill it. Others have complained that it did not take up any ink; that when they turned the knob as directed the pen did not fill.

Q123. Did Mr. A. E. Bennett, whose address is given as 243 St. Elizabeth Street, Montreal, inform you respecting the exchanging of a pen? A. He called in the store while I was there and offered his pen for exchange.

Q124. Have you any memorandum that will refresh your recollection as to when that was? A. Yes.

587 Q125. When was it? A. February 15, 1911.

Q126. Did you have any conversation with Mr. Bennett at that time? A. Yes.

Q127. You were present when Mr. Bennett testified in Montreal, were you not? A. Yes.

Q128. Was the story that he told you when he called at your store February 15, 1911, substantially the same that he told as a witness in this case? A. It was.

Q129. Was this memoranda that you refreshed your recollection from made concurrently with the time Mr. Bennett called at your store for the exchange of the pen? A. Yes.

Q130. Did he bring with him the memorandum annexed to this slip which you have produced? A. Yes, he did.

588 Q131. Which is signed Granger Freres, Ltd.? A. He did.

The slip and memorandum signed Granger Freres, Ltd. produced by the witness is introduced in evidence and the same is marked Plaintiff's Exhibit 44.

Same objections; also it is not even claimed that it came from Granger Freres but from a third party; there is no proof that Granger Freres has any relation with this defendant.

Q132. Have you frequently received orders, memorandums from Granger Freres, Ltd. of Montreal? A. Yes.

Q133. Does the signature on the memorandum forming part of Plaintiff's Exhibit 44 correspond to the signature on these orders? A. It does.

Q134. Has any evidence come to your attention of the sale of the fountain pens marked A. A. Waterman & Co. in a manner which would tend to deceive or mislead the public into believing that the pens offered were Waterman's Ideal Fountain Pens or Waterman's pens?

Mr. Bacon: Objected to as leading and as a mere conclusion.

A. Yes.

Q135. Have any salesmen selling pens marked A. A. Waterman & Co. told you that they sold them as Waterman pens?

Mr. Bacon: Objected to as irrelevant and immaterial; 590
that there is no proof that the party named was actually a salesman of the defendant.

A. Yes.

Q136. Who were these salesmen connected with? A. Connected with Warwick Bros. & Rutter, Toronto.

Mr. Bacon: I move to strike that out on the ground that there is nothing to connect Warwick Bros. & Rutter with the defendant.

Q137. Have any advertisements come to your notice where pens marked A. A. Waterman have been advertised as Waterman pens?

Same objections. 591

A. Yes, I have had some newspaper advertisements.

Q138. Will you please produce one of them? A. The St. John Standard of October 21, 1910, the advertisement of Barnes & Co., Ltd.

Q139. Where are they located? A. St. Johns, New Brunswick.

Mr. Bacon: Objected to as immaterial and not connected in any way with the defendant.

592 *Edward J. Kastner*

The advertisement produced by the witness is offered in evidence and marked Plaintiff's Exhibit No. 45.

Same objections.

Q140. Do you know whether the L. E. Waterman Company of New York manufacture and sell fountain pens which are marked "Waterman"? A. Yes.

Q141. What kind of fountain pens are they? A. All styles.

Q142. How long, to your knowledge, have they made and sold such fountain pens, with such marking? A. As long as I have been connected with the Waterman Companies.

Q143. Both companies? A. Yes.

593 Q144. Does the L. E. Waterman Company manufacture and sell fountain pens marked Waterman's? A. Yes.

Q145. Without any initials or without the word Ideal? A. Yes.

Q146. These pens have gold pens in them bearing the words "Waterman's Ideal"? A. Yes, they have them bearing the words "Waterman's Ideal."

Q147. The name Waterman's is on the rubber part? A. Yes.

Q148. And is the same true of pens marked Waterman? A. Yes.

Q149. Are those pens both silver mounted goods and gold mounted goods and plain pens; I mean by plain pens, pens without any mounting? A. There are all kinds.

594 Q150. How long has that been the practice of the L. E. Waterman Company of New York? A. As long as I have been with them. That is all I know about it.

CROSS-EXAMINATION by Mr. Bacon:

XQ151. You do not claim that any act of anybody connected with the Modern Pen Company or with A. A. Waterman & Co. has in any way tended to increase any confusion that would arise from the similarity between the names of L. E. Waterman Company and A. A. Waterman & Co., do you? A. I have understood that their salesmen left that for the dealers to do.

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Mr. Watson: Will counsel for defendant, in view of his last question, admit that there is confusion between the goods manufactured and sold by the L. E. Waterman Company and those marked A. A. Waterman & Co., New York?

Mr. Bacon: Counsel for defendant admits and alleges that there is confusion arising from the similarity of the names; and alleges further that this admission and allegation was made in open court and on briefs in the action now pending in the New York State Court of Chapman against L. E. Waterman Company, before the beginning of this action; but alleges that such confusion arises from no act of the defendant, the A. A. Waterman & Co., but arises purely from the fact that there are two Watermans in existence, one named A. A. Waterman & Co. and the other L. E. Waterman Company and this fact of confusion was admitted in open court the first time of any conflict between these parties, or their privies, in the year 1910 and there has never at any time been any claim that there was not confusion arising from the fact of the similarity of the names; but counsel also alleges that the confusion is very slight; that nearly all intelligent people know the difference and especially all those who have any knowledge of the manufacture and sale of pens, and of the different varieties of pens on the market.

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XQ152. (The question is repeated)? A. I would not want to change it. I don't see anything different from what I have said.

XQ153. Have you ever had any conversation along this point with anybody connected with the Modern Pen Company? A. Anyone that is now connected with the Modern Pen Company?

XQ154. Yes? A. As to whether the A. A. Waterman & Co. will you read the question again?

XQ155. (Question repeated)? A. No.

XQ156. Anybody at any time connected with the Modern Pen Company? A. No.

XQ157. Then you have no personal knowledge attained by conversation with anybody, now or at any time connected with

598 *Edward J. Kastner*

the Modern Pen Company, that would throw any light upon whether or not there was any confusion other than that which arises from the fact of the similarity of the names? A. I have not had any conversation with anybody connected with the Modern Pen Company.

XQ158. Have you had any conversation with anybody connected with A. A. Waterman & Co.? A. Not that I know of. If you will tell me who they are, maybe I can answer.

XQ159. Then all of your testimony in relation to confusion arising from the similarity of names, or otherwise, is what somebody has told you or written you, that somebody not being con-
599 nected with the defendant? A. I have no way of knowing whether they are connected other than they represent themselves as being agents.

XQ160. Whom have you ever talked with who represented himself as being an agent? A. Your other question was a little different; if you will go back to that other question. This last question is whether I had any conversation with anyone. The other question was whether I had any correspondence or conversation with any one who represented themselves as an agent. You want to know whether I had any conversation, now?

XQ161. Let the question be repeated (question repeated)? A. I have not talked with any one excepting a salesman who represented himself as agent for Warwick Bros. & Rutter, who advertise themselves as agents of A. A. Waterman & Co.

600 XQ162. Have you such an advertisement? A. I think I can find one here. There was one up in Montreal of Warwick Bros. & Rutter.

XQ163. Then you refer to the advertisement introduced in evidence in Toronto while you were present, when the testimony was taken? A. If I could see a copy of the book-seller and stationer, Toronto, I could tell. There were several copies. This is marked 23.

XQ164. It is the same exhibit that was introduced in evidence in Toronto? A. It is the one dated October, 1910.

XQ165. And you heard the testimony of the representative of Warwick Bros. & Rutter given in Toronto, didn't you? A. Yes.

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XQ166. And you heard him say they were not agents in any way except that they bought pens and sold them just as they did of other makes? A. I don't remember whether I heard him say so or not.

XQ167. And you also know that he produced a letter which purported to have been the only relation existing between the Modern Pen Company and Warwick Bros. & Rutter? A. No, I heard you ask for such letters, or somebody and I left the room then and went down to the hotel.

XQ168. How do you mark pens that are manufactured in Canada? A. We mark some of them Waterman's some of them Waterman and others Waterman's Ideal, others Remex; others Pen & Ink; others Elf and Acme; and we have marked under 602
different dealers' own imprint.

XQ169. How many pens have you manufactured up there during the year 1910, say? A. I could not say offhand.

XQ170. Approximately? A. It is very hard to say. Probably one hundred thousand.

XQ171. How many of those one hundred thousand have been marked Waterman or Waterman's alone? A. That is hard for me to say because they are marked in different ways and I could not give an exact percentage of them, but a good many of them go through that way.

XQ172. You knew that you would be examined on this question before you came down, didn't you? A. No.

XQ173. Is it not a fact that a very minute percentage are 603
marked Waterman or Waterman's alone? A. I would not say so, no.

XQ174. Are you willing to swear that as much as one per cent or 1,000 are marked that way? A. One thousand a year.

XQ175. Yes? A. It is hard for me to say without going over the figures about what we do. We have a big pen business. There are lots of them imprinted. It is hard for me to say offhand.

XQ176. You are not willing to swear that even one per cent are marked that way? A. I would say a good percentage were marked that way.

XQ177. Are you willing to swear that as much as one per cent are marked that way? A. If one per cent was a "good percentage," yes.

XQ178. What is your idea of a good percentage? A. It would be hard for me to state that, the percentage.

XQ179. Are you familiar with the stocks of the plaintiff's goods at 173 Broadway? A. I was when I worked there.

XQ180. Are you now? A. I have seen the goods.

XQ181. Can any man go into that store today and find on the ground floor one single pen marked Waterman or Waterman's alone? A. Yes, he can.

605 XQ182. Where would he find it? A. I think he would find it right in the retail department; I would say so.

XQ183. You have not tried it? A. Myself?

XQ184. Yes? A. No, I have not tried it; I have had no occasion to try it.

XQ185. If I should tell you that others had tried it and they could not find them you would not want to dispute them, would you? A. I would go and find one.

XQ186. They would have to send upstairs or in the cellar to find one, wouldn't they? A. No.

XQ187. Are any pen points, or what are usually called gold pens marked Waterman or Waterman's alone? A. You are speaking now of what we manufacture in Canada?

XQ188. Yes? A. They are stamped Waterman's Ideal.

606 XQ189. You have had instructions for some time to collect any evidence along the points concerning which you have testified today, have you not? A. No.

XQ190. You have been on the lookout for advertisements that might not be what you thought were just right? A. I have looked for those things, after I had complaints. I have had so many complaints that I have collected them here and there.

XQ191. Have you ever seen an advertisement that you thought was not right excepting the one introduced in evidence today and the one introduced in evidence in Toronto? A. I have seen other advertisements with the name Waterman, so as to indicate that they were sold by the name of Waterman.

XQ192. Did they indicate whose pens were being sold? A. The cut of the pen showed on the side A. A. Waterman & Co., New York.

XQ193. Can you produce any such other advertisement that has been found anywhere? A. I don't know now. They come in from the clipping bureau and go through the regular ads.

XQ194. And you knew that it was desirable to find them, didn't you? A. No, not necessarily so.

XQ195. How did you get this Barnes advertisement of St. John, New Brunswick? A. It came in in our regular advertisement department where all the newspapers come.

XQ196. That was October 21, 1910? A. Yes. 608

XQ197. And then you were looking for such things, were you not? A. Yes, we look through all the papers for all ads.

XQ198. Is this the only one you found? A. No.

XQ199. Why didn't you produce the others? A. That is the one I had. I had another complete paper. I have lost it in my papers.

XQ200. Have you any other advertisements besides this? A. That same ad?

XQ201. Yes? A. Yes.

XQ202. Have you any other similar advertisements from other papers? A. Yes, there was an advertisement in Fredericton. I don't remember the name of the paper but I think you will find the advertisement in the book there; I don't know what you call it. 609

XQ203. You have found it very rare that anybody advertised a Waterman pen and had a picture of an A. A. Waterman pen on it? A. Most all the Waterman advertisements that I see are advertising our fountain pen.

XQ204. Did you ever see another advertisement, advertising Waterman pens, and which had a picture of an A. A. Waterman pen, except that one in evidence? A. Yes, I have seen them.

XQ205. When? A. I could not tell the dates.

XQ206. You have frequently observed them? A. No.

XQ207. Very rarely I suppose? A. We keep files of ads in all papers. It is our business to keep track of everybody.

XQ208. You have not produced any but this? A. That is a recent one.

XQ209. Have you found none since October 21, 1910? A. I have found none.

XQ210. You do not make any claims that the Modern Pen Company or anybody connected with it had anything to do with this advertisement or knew anything about it? A. I don't know.

XQ211. Where is the retail business of Granger Freres? A. It is on Notre Dame Street on the corner of the Square, Place D'Arms.

XQ212. They have there a large store about seventy-five feet
611 front by sixty feet deep, have they not? A. It is a good sized store. It takes in the corner.

XQ213. And are those figures approximately right? A. I would say so, yes.

XQ214. It is four stories high and a basement? A. I don't remember the exact height but I should say from three to four stories.

XQ215. And it is all occupied by the retail department? A. No, I don't think so. If it is it is only recent. His office is upstairs.

XQ216. You have been upstairs in his office? A. Not to his office, no.

XQ217. Is it not a fact that the only office in the building relates to the retail business itself and it is a very small room
612 on the second floor? A. I don't think so. I think there are two numbers. Perhaps one of the buildings goes all the way up but on the corner there was an entrance on Place D'Arms. If I recollect there is a sign there.

XQ218. Is it not a fact that Granger Freres at the retail place employ over fifty employees? A. I have no knowledge.

XQ219. You have seen a good many there, have you not? A. No.

XQ220. Granger Freres sell Waterman's Ideal Fountain Pens? A. Yes, they sell L. E. Waterman's Ideal Fountain Pens.

XQ221. And they also sell A. A. Waterman's? A. Yes.

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XQ222. And they also sell other makes, not made by either plaintiff or defendant? A. I think so.

XQ223. That is to say, they sell all makes that they buy? A. I don't know whether they sell them or give them away or what they do.

XQ224. You have never had any suggestion that they are in business for their health? A. They might be. I have known some people to be in business for their health.

XQ225. As you go into their store, on the right of the door there is a very large case for the sale of fountain pens? A. Yes.

XQ226. And in that case they sell various makes? A. I never looked closely. The first time that I noticed the case strong was when I took you in there, went up with you to show you where Granger Freres was.

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XQ227. Then you saw that case? A. I saw a case.

XQ228. And you knew they were selling L. E. Waterman's pens in that store? A. I knew they were selling L. E. Waterman pens.

XQ229. How did it happen that he should have asked the Post Office Department to deliver Waterman's mail to them; have you any idea? A. I have not the slightest idea excepting the assistant postmaster told me they brought an order from A. A. Waterman & Co.

XQ230. Mr. Geyer says that is the first time he ever heard of it?

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Mr. Watson: I object to that and move to strike it out.

XQ231. Are you sure that the order was from the A. A. Waterman & Co.? A. I only have the word of the Assistant Postmaster and I have also a letter in which the Postmaster refers to something to that effect.

XQ232. Do you produce that letter? A. I can.

XQ233. You do not claim that Granger Freres have anything more to do with these defendants than any other people who sell their goods? A. It is understood that they are agents for A. A. Waterman & Co. there.

XQ234. It is also understood that they are agents for L. E. Waterman Company? A. No.

XQ235. They sell both kinds of pens, don't they? A. Yes, they are dealers in L. E. Waterman pens.

XQ236. What is your idea of the difference between an agent and a dealer? A. One who holds himself responsible for the company, to take care of them and look after them and act for them.

XQ237. Would Granger Freres look out for and take care of your goods if they sold them, the same as they would any one else? A. They would probably refer anybody to us if there was
617 anything out of the ordinary, or if a man purchased at some other place. If they had not handled the transaction they would probably send him away.

XQ238. Would they not also send to A. A. Waterman & Co. if anybody happened to have one of their pens? A. I have no knowledge. I understood that a man in their employ had come down to A. A. Waterman & Co., in New York to be trained to do their repairing.

XQ239. Does it take any special training to do repairing? A. I would say so, yes; decidedly so.

XQ240. You said that Mr. A. E. Bennett came to you and told you the same story that he testified to in Ontario; what did he tell you? A. I said I was in the store when Mr. Bennett came in and he brought a slip of paper or an order from Granger
618 Freres in regard to an exchange of a pen that he had, one of ours, and in selecting his pen he explained to the young lady what a difficult time he had had to secure what he wanted to buy and he called me out, so I spoke to Mr. Bennett and Mr. Bennett told me practically what he testified up there.

XQ241. What did he tell you? A. He started by telling me that he first went to Granger Freres and purchased a Sterling fountain pen, which he had used for some little while and found that it was unsatisfactory and also explained that he had been in the hospital for some time, sick, and after he got out he took it back to Granger Freres and told them that he would like to exchange it for a Waterman fountain pen and they handed him

out a pen stamped A. A. Waterman & Co., New York and began to explain to him the merits of the pen and he said it was not the same kind that he had been acquainted with in England and he further stated to me that he had written to England to see just what that pen was and found it was a Waterman Ideal and he insisted on getting one stamped Waterman Ideal. Then he asked them why there were two pens stamped Waterman and the young man in charge told him that there was no difference in the companies they were both the same company but that one was sold in Canada under Waterman Ideal and manufactured there and the other was sold in the United States as A. A. Waterman & Co. That is as I remember it.

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XQ242. He did not tell you the name or the description of the young man who had told him that? A. Yes, he told me the name and description of the young man.

XQ243. Can you give it? A. I can easily refresh my memory as to his name by looking at the signature of the order. I can give you a description of the young man. He is the same young man that I introduced you to.

XQ244. Did he give you the name? A. Yes, he gave me the name. No, he did not give the name; he gave me a description of the young man and told me it was the young man who was in charge of the pen counter.

XQ245. He did not give you any name? A. No.

XQ246. Then you could not distinguish this young man by his name, if he did not give you the name? A. He is the only 621 one who has charge of the pens there.

XQ247. How do you know that? A. He stated so.

XQ248. Who stated so? A. The young man at the pen counter.

XQ249. How many pens do you take in for repair on an average per day? A. I could not give the estimate. A good many repairs come in. There is a whole lot of repairs come in.

XQ250. How many in a week? A. If I knew the day I could easily multiply by the week.

XQ251. You don't take A. A. Waterman pens for repair do you? A. We repair them

XQ252. How many? A. Quite a number.

XQ253. How many a day? A. It would be hard to estimate. There may be one or two; there may be three or four.

XQ254. There might be none? A. There is more than none. There could not be one, two or three and none.

XQ255. Wouldn't there be a good many days when there would not be any? A. You asked for the average.

XQ256. Yes? A. I cannot give an average if there are certain days when there are none. I say there may be two, three or four on an average in a day.

XQ257. And there might be a great many days when there would not be any? A. There might be some days when there
623 would not be any.

XQ258. Weeks at a time? A. No, I would not say weeks at a time.

XQ259. But it is a very minute proportion of A. A. Waterman pens that come in to be repaired? A. No, I would not say that, counting those who come in and think they have our pens, and those who come in for repair.

XQ260. The repairs to the A. A. Waterman pens do not vary from the repairs to the L. E. Waterman pens, do they? A. If you count complaints repairs.

XQ261. Why should a complaint be called a repair? A. I said if you count complaints repairs. I would call a repair a pen that had been worn out, needed a new point, an accident had
624 occurred to it. A complaint would be those that are defective or had some weakness in the construction or no iridium on the point or leaked.

XQ262. That same kind of complaint comes in about L. E. Waterman's pens? A. Yes, but not weakness of construction or that they do not write.

XQ263. Did you ever see with your own eyes a middle joint A. A. Waterman pen that had been broken at the middle joint? A. Yes.

XQ264. How many? A. I have seen a number in my time.

XQ265. How many? A. You are speaking now of Canada or the United States?

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XQ266. Well, confine it to Canada? A. I could not say how many but there have been numerous cases. They come frequently. I have no occasion to keep track of those.

XQ267. Once a month? A. It might be more than once a month; it might be once a month.

XQ268. How many have you ever seen with your own eyes with the knob broken off the end? A. I have seen quite a number.

XQ269. What do you mean by quite a number? A. There might be one a day there might be three a day. I have no recollection. I keep no track. They are not our pens.

XQ270. You have no personal recollection of two pens, A. A. Waterman pens, coming in in a day for repair? A. I could not cite the day but I would be willing to say that there have been days when two came to me. 626

XQ271. Any number of L. E. Waterman pens come in broken all sorts of ways, don't they? A. Pens are brought to us for repair that have been broken through accident. You might put them through a threshing machine, as you said once before. But they do not become broken from weakness of construction.

XQ272. But the caps are frequently broken? A. The caps are sometimes broken by being dropped and stepped on.

XQ273. And the pen points are frequently out of order? A. Yes, the pen points are broken sometimes.

XQ274. And the iridium gets off for the same reason? A. What do you mean by the same reason? 627

XQ275. Accident? A. Yes, accidents may break them.

XQ276. And any pen that is neglected will get dirty and simply want washing? A. Any pen may be neglected. You mean they get filled up?

XQ277. Get dirty? A. How should it get dirty. What do you mean by dirty?

XQ278. For instance if a man carried it in Pittsburg you would not ask me that question? A. It would not get dirty in Pittsburg if the cap was on right. I don't know what you mean by dirty.

XQ279. Don't you often have to wash pens, put them in water? They are clogged up for that reason? A. For the reason that they were dirty.

XQ280. Yes, thick or dirty ink? A. Yes, we clean them out.

XQ281. A great many of the so-called repairs consist merely in getting rid of the clogged or dirty ink which they use? A. Whose repairs are you speaking of—ours?

XQ282. Yes, L. E. Waterman pens, all sorts? A. All sorts of pens?

XQ283. They are just the same aren't they; they have to be cleaned out? A. No, it needs more than that to make some of them write.

629 XQ284. You have a great many so-called repairs that consist of merely clogging from dirty ink, don't you? A. We have some repairs that way. I would not say we had a great many.

XQ285. What is the matter with a pen when it will not write, as you have testified? A. There may be various reasons. The pen may not be made right in the first instance.

XQ286. You find a great many L. E. Waterman pens that are made that way? A. Not made right?

XQ286½. That will not write at all, and will leak? A. That is only when some accident occurs to them.

XQ287. Then if a pen of any make comes in to you and it does not write, you look for some accident, don't you? A. We look for something like that, yes.

630 XQ288. And that relates to all makes of pens? A. No, not necessarily.

XQ289. You do not claim for a minute that an L. E. Waterman is essentially different in its construction from any other pen, do you? A. I do. I claim the way we adjust them, the way we put them together makes them sure and they write.

XQ290. You do not claim that those "sure" pens that will write do not have to come back to you for readjusting and repairs every little while? A. Except that somebody has taken it out or interfered with it or it has met with an accident.

XQ291. Are there not thousands of cases where people come to you with an L. E. Waterman pen and tell you that it don't

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work, and that they have not met with any accident and they don't know the reason for it? A. I would not say there were thousands of cases.

XQ292. A great many of them? A. No, I would not say a great many. You would say "Thousands" and "a great many" might mean the same.

XQ293. Hundreds of them? A. No.

XQ294. How many? A. There might be plenty of days that there are none.

XQ295. One of the employees of the New York Company testified the other day as my memory goes, that they sold for cash about one hundred a day and exchanged about four hundred a day? A. That is in New York?

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XQ296. In New York? A. I am talking of Canada.

XQ297. Do you claim that you make a better pen in Canada than they do in New York? A. Not necessarily.

XQ298. You exchange a great many pens in Canada don't you? A. No, I would answer that this way, that we are closer to them there and sell them what they want in the first place.

XQ299. You now refer to exchanging points which suit their hand? A. We can get closer to them and serve them with the pens that they want first.

XQ300. But comparatively few buy at the factory? A. We train the dealers and make investigation and give careful attention to them.

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XQ301. Is it a fact that about four times as many are exchanged as are sold for cash? A. Where do you mean, for cash? Our principal business is wholesale in Canada. We have a store; but Montreal cannot be compared with New York?

XQ302. You do not do very much repairing then at your factory? A. Yes, we repair at the factory.

XQ303. But that is only local? A. For all Canada.

XQ304. Do they send in from all Canada to the factory to be repaired? A. Yes.

XQ305. You have given us here a large number of names that you say have complained of confusion. How many ever came to

634 *Edward J. Kastner*

you personally with these complaints? A. Which list do you refer to? If you will read the names I can tell you.

XQ306. There is one here from Gratton? A. How many names are there there altogether?

XQ307. About a dozen or more? A. Well, the way I would meet those people, would be they would come into the store and the clerk would call me.

XQ308. How many names can you give where you personally saw any party who made the complaint? A. How many names?

XQ309. Yes? A. I guess I have got them. There have been a great many come to me. It is hard for me to remember the
635 names. I can remember and name now at least four.

XQ310. Give them again. You have them there on a paper? A. J. H. Cantin, H. Bastien, J. J. Nolan and there is another French name there Bousecours.

XQ311. Those are the only four that you had any personal communication with? A. Those are not the only four that I had personal communication with. They are the only four I can recollect just this minute.

XQ312. All of those except Mr. Nolan were French, were they not? A. You cannot go by the names there. There is a large percentage of French. Our population in Montreal is two-thirds French.

XQ313. Did they speak English well? A. Yes.

XQ314. What did Mr. Cantin complain of? A. Mr. Cantin
636 told me that he purchased the fountain pen from Carsley & Co. with whom he was employed and he purchased the pen as a Waterman fountain pen and he presumed he had ours and he met me and complained of the pen not working satisfactorily and wanted to know if I could not put it in order for him.

XQ315. Carsley & Co.—what is their busines? A. A department store in Montreal. They have since been succeeded by A. E. Ray & Co.

XQ316. How long ago was this conversation with Mr. Cantin? A. I would say it was back perhaps a month ago or six weeks ago.

XQ317. What did Mr. Bastien tell you? A. I had to go to the Post Office with reference to customs duties and he was a clerk there at the counter and he told me that he had a fountain pen that was not right and wanted to know if I could put it in order for him and he showed me a pen stamped A. A. Waterman & Co., New York.

XQ318. Where did he get it? A. Granger Freres.

XQ319. What did he say they had told him? A. They told him it was a Waterman fountain pen and he presumed he had one of ours.

XQ320. And what did Mr. Nolan tell you? A. Mr. Nolan told me that he had purchased a Waterman Ideal Fountain Pen a good many years ago and he used it with entire satisfaction and 638
lost it, or something to that effect, and he tried to buy a new one. Formerly our retail store was at 136 St. James Street, Montreal, which street continues into the Square, on which Granger Freres store is situated. He remembered that and came back to the store on St. James Street, having seen our sign there; and in the meantime that building had been torn down and we moved to 123 St. Francis Xavier Street and he continued right on until he came to Granger Freres store where he saw the fountain pens displayed and went in to purchase, called for a Waterman fountain pen, as he states to me, and purchased the pen, that he now has, which was stamped A. A. Waterman & Co., New York. The pen was not satisfactory and he looked in the telephone book and found our advertisement on the first 639
page and he came up to our store.

XQ321. What is the name of the fourth man? A. Poulin, I think.

XQ322. What did he say to you? A. He brought a pen into the store claiming that the pen was not satisfactory and wanted us to put it in order for him.

XQ323. Where did he say he bought it? A. He did not say where he bought it.

XQ324. Did he say that he thought it was an Ideal? A. He said he thought it was one of our pens, pens made by us.

XQ325. That is all that he did say? A. Yes.

640 *Edward J. Kastner*

XQ326. You have four there covered by these four incidents, Cantin, Bastien, Nolan and Poulin? A. Those were recent occurrences.

XQ327. No one of these with whom you had personal conversations had had any business relations with the Modern Pen Company or A. A. Waterman & Co. so far as you know? A. I don't know anything about that.

XQ328. When Mr. Ferris came over to Montreal to look after the factory, about once a month, how long did he stay each time? A. He stays various times; sometimes he will stay a day, sometimes two days, sometimes four days.

641 XQ329. The L. E. Waterman Company, Ltd., is an entirely different corporation from the L. E. Waterman Company? A. It is a Canadian incorporated company.

XQ330. They are entirely different? A. They are incorporated in Canada although some of the same officers of the L. E. Waterman Company are officers in that company.

XQ331. The L. E. Waterman Company is a New York corporation? A. Yes.

XQ332. Who are the officers of the Canadian corporation? A. Mr. F. D. Waterman is president and treasurer; the secretary is E. J. Kastner.

XQ333. Yourself? A. Yes.

XQ334. Who are the Board of Directors? A. The Board of Directors are F. D. Waterman, Walter Randall, F. S. Waterman,
642 William I. Ferris and E. J. Kastner.

XQ335. How many of those reside in Canada? A. I reside in Canada.

XQ336. You are the only one? A. Yes.

XQ337. Do you know anything about the stock holdings? A. I know that the L. E. Waterman Company owns a majority of the stock.

XQ338. Do they own it as a corporation? A. It is in their name.

XQ339. All but qualifying shares? A. Yes.

XQ340. How many shares do you own? A. Ten shares.

XQ341. Just enough to qualify you under the Canadian law? A. No, I think one share would qualify me under the Canadian law.

XQ342. Do the other directors each hold ten shares? A. Yes.

XQ343. And all the rest is held by the L. E. Waterman Company? A. Yes.

XQ344. Then there are a great many people in Canada according to your testimony who, when they have an A. A. Waterman pen, think they have a Waterman pen; is that right? A. There are a great many people think they have a pen of our manufacture.

XQ345. Have you any information that would indicate that those who have A. A. Waterman pens call them Waterman pens? 644
A. Well, they come to us with their complaints.

XQ346. And they call them Waterman pens do they? A. Yes.

XQ347. And they think that the pen they have is a Waterman pen? A. They think the pen is made by us.

XQ348. Will you answer yes or no? A. Yes, they think it is a Waterman pen.

XQ349. And if a man has an A. A. Waterman pen he is very apt to call it a Waterman pen? A. Yes.

XQ350. And if it is an L. E. Waterman pen he is very apt to call it a Waterman pen? A. They call our pens generally Waterman pens.

XQ351. But where they deal in A. A. Waterman pens they also call them Waterman pens, don't they? A. You mean now 645
that the dealer calls them Waterman pens?

XQ352. (Last question repeated)? A. Yes, they sell them as Waterman fountain pens.

XQ353. Do people who own pens, or call for pens, when they go into a Waterman pen place and know that they are selling A. A. Waterman pens, from the sign—do they call them Waterman pens? A. There are very few signs. I don't remember seeing signs in Montreal in the windows that said A. A. Waterman & Co.

XQ354. There are a number of places in Montreal where they sell A. A. Waterman pens? A. There are some places.

646 *Edward J. Kastner*

XQ355. At Granger Freres they have got a very big sign outside of their case, "A. A. Waterman & Co. Pens"? A. I spoke of the window. I saw the case for the first time when I went with you.

XQ356. You saw a great big sign "A. A. Waterman & Co." didn't you? A. I could not say whether it was A. A. Waterman & Co. or what it was. I saw the case.

XQ357. You did not see the sign? A. I did not see the sign.

XQ358. Was not the sign six feet long? A. They might have ten thousand signs.

XQ359. If a man, an individual, not a dealer is getting an
647 A. A. Waterman & Co. pen wouldn't he call for a Waterman pen? A. I would not know what they called for. I only know what they call for when they bring them to me.

XQ360. You have never dealt in A. A. Waterman pens in your life, have you? A. No.

XQ361. Never have been with any concern that sold them? A. No.

XQ362. Never had any connection with any concerns that sold them? A. No.

XQ363. All your business experience has been devoted to the L. E. Waterman pens? A. All my business experience?

XQ364. Yes? A. No, I have worked for other people.

XQ365. How many years ago? A. Quite a number of years ago. It is back before I came with Waterman.

648 XQ366. During the last fifteen years you have had no business relations with anybody selling A. A. Waterman pens? A. No, excepting dealers that I sold our goods to.

XQ367. And as far as you know, where dealers sold A. A. Waterman pens their customers would come in and ask for Waterman pens didn't they? A. Where they sold them exclusively?

XQ368. Yes? A. I would not know what they came in and called for.

XQ369. Then all you know about it is what you have heard in connection with those firms that sell L. E. Waterman pens; is not that so? A. No, people come to me and I have had letters

of all kinds, showing that where they sold the other pens they have sold them as pens manufactured by L. E. Waterman.

XQ370. How many letters do you get a day in the Montreal office? A. A good sized package of letters; perhaps seventy-five or one hundred letters more or less.

XQ371. And these that you put in evidence today were the only ones that you could pick out where there had been mistake and confusion? A. No.

XQ372. Why didn't you bring the others? A. I took them at random.

XQ373. You have been saving them for a long time? A. No; I have not, the dates will show. Most of them are recent.

XQ374. And there is not on any one of these letters anything, any memorandum that would tell you what pen came in in connection with the letter? A. Yes. 650

XQ375. You did not put any memorandum on the letter itself? A. I took a memorandum off of the letter.

XQ376. Have you those memoranda? A. No, just little slips. I had no particular memorandum other than the repair slip. There is one attached there.

XQ377. This exhibit relating to A. E. Bennett shows nothing except that Granger Freres sent in a pen of his to be exchanged, is that it? A. I think there is some reference to a number on that other slip (looking at the slip). No, but I remember the pen.

XQ378. You do not claim that the pen that he brought in to be exchanged was an A. A. Waterman pen, do you? A. No, it was a Waterman Ideal. 651

XQ379. What was the object of producing this correspondence? A. What did I produce it for?

XQ380. Yes? A. Don't ask me that.

XQ381. What is it for? A. A. E. Bennett came in and exchanged a pen and told me what he has testified to.

XQ382. Then it is simply to confirm the fact that Mr. Bennett came to see you; is that it? A. He came in to see me, yes.

XQ383. This exhibit did not have anything to do with the A. A. Waterman pens? A. With a pen stamped A. A. Waterman & Co.?

652 *Edward J. Kastner*

XQ384. Yes? A. Only what Mr. Bennett repeated to me, as to what pen was offered to him and the story that was told in connection with it

XQ385. Referring to Exhibit 43 W. R. & S. A. Campbell to L. E. Waterman & Co., a postal card dated in Winnepeg. It refers to two pens in a box. What kind of pens were those? A. I think one of them was a Parker pen and I think the other was stamped A. A. Waterman & Co., New York. I am not so sure. I can tell you from the memorandum there (looking at memorandum). One was Waterman's Ideal—two of them were Waterman's Ideal.

653 XQ386. Those do not relate to A. A. Waterman at all? A. No.

XQ387. But simply relate to that controversy that you had with Granger Freres about the Post Office; is that it? A. I had a controversy with the Postmaster.

XQ388. Referring to Exhibit 42, Rev. Carom, to L. E. Waterman Company, September 15, 1909, a year and a half ago. There the man had a present of a pen that he thought was an Ideal and it was an A. A. Waterman; he did not give you to understand that anybody connected with the Modern Pen Company or A. A. Waterman & Co. had deceived him in any way, did he? A. His letter explains that he received a pen as a present in one of our boxes stamped Waterman's Ideal Fountain Pens.

XQ389. You don't know what dealer had sold him an A. A.
654 Waterman pen in an L. E. Waterman box? A. I think he mentions the name of the dealer there. I think it was Carsley & Co.

XQ390. And you never heard of another instance similar to that, did you? A. Of people securing a pen as a present in one of our boxes?

XQ391. No, selling A. A. Waterman pens in an L. E. Waterman box? A. Yes.

XQ392. How often? A. Quite frequently.

XQ393. Who does it? A. Different dealers.

XQ394. Name them? A. I could not give the names. An instance not long ago was called to my attention.

XQ395. You have no personal knowledge? A. Excepting I have people who come into the store. I can give you an instance, about two years ago at Christmas time a gentleman came down by the store rather late in the evening and stopped at the window and looked at the pens and came in and said, "I have just purchased this pen at Carsley's Department Store. I would like to exchange it."

XQ396. Carsley sells L. E. Waterman's pens too don't he? A. Carsley is out of business now.

XQ397. When he was in business? A. Not at that time. I don't think he sold ours at that time.

XQ398. He had been selling your pens? A. He had purchased a long time back a few pens. 656

XQ399. What pens generally did he sell? A. I don't know.

XQ400. He did not sell many A. A. Waterman pens, did he? A. I don't know how many he sold.

XQ401. Do you know that he sold any? A. If you will let me finish that story about that man I will tell you. He brought this pen in and wanted to exchange it. It was in one of our boxes. We told him that it was not our pen and that he had better take it back to where he bought it and have it exchanged and he went back there and demanded his money back and he came back to our store.

XQ402. At that time was Carsley selling L. E. Waterman pens as well as A. A. Waterman pens? A. I think so.

XQ403. Are you sure? A. I am not sure whether he was selling them just at that time 657

XQ404. It is a very easy thing for a man who sells both kinds of pens to occasionally make a mistake about a box? A. I would not say so.

XQ405. You never make mistakes in your facory? A. I never make mistakes in the factory?

XQ406. Yes? A. I may have made mistakes but I certainly do not make a mistake on boxes.

XQ407. You don't have but one kind of box, do you? A. Yes.

XQ408. All your boxes are marked L. E. Waterman? A. All our boxes are marked Waterman's Ideal.

XQ409. Then you could not make a mistake and get an A. A. Waterman box? A. You ask me if I ever made a mistake in the factory.

XQ410. What is your answer to that? A. Certainly I make a mistake in the factory. I wouldn't do anything if I did not.

XQ411. I call your attention to Exhibit 41, Smyth to Waterman Co and ask you if there is anything in that letter or any memorandum on it to indicate that it refers to an A. A. Waterman pen? A. There is no memorandum on that letter.

659 XQ412. And nothing in the letter? A. Nothing in the letter that refers to that.

XQ413. It might just as well refer to L. E. Waterman pens as A. A. Waterman? A. In this case it refers to a pen stamped L. E. Waterman.

XQ414. What is the date? A. December 28, 1909.

XQ415. That is over a year ago? A. Yes.

XQ416. And you have been saving it carefuly all this time? A. No, I have not been saving it carefully all this time. This is one of the letters that is in the book. It was some time back.

XQ417. And you have a very distinct recollection notwithstanding the fact that there is nothing in the letter or on the letter to substantiate it, that that was an A. A. Waterman pen and not an L. E. Waterman pen? A. Yes, I remember it.

660 XQ418. Did you put the letter aside as soon as you received it, for the purposes of evidence? A. No, I cannot say that I put it aside. I am pretty familiar with all the correspondence that goes through.

XQ419. These letters that you have produced here today are all the letters along this line of testimony, are they? A. No, there are no doubt lots of other letters.

XQ420. You cannot think of any others? A. I would be a wonder if I could think of all the letters.

XQ421. Do you think of any other letter wherein an A. A. Waterman pen has been returned to you with the statement that they thought it was an L. E. Waterman pen? A I think there are some more there.

XQ422. Outside of this bunch? A. I have no doubt I could find some.

XQ423. I call your attention to Exhibit 39 and ask you if there is anything in that postal card or any memorandum on it that would indicate that it refers to an A. A. Waterman pen? A. No, he thought he sent us a Waterman Ideal fountain pen.

XQ424. How do you know that he did? A. He gives us our number.

XQ425. Gives what? A. He gives our number.

XQ426. What about the number? A. It is number 12.

XQ427. Don't every pen maker have No. 12? A. I have never seen them.

662

XQ428. That is the only thing that makes you know that that refers to an A. A. Waterman pen? A. No, that refers to a Waterman Ideal Fountain Pen.

XQ429. This postal card? A. Yes, but he sent in an A. A. Waterman.

XQ430. Was the A. A. Waterman that he sent in a No. 12? A. No, it is right there in the envelope.

XQ431. Then where did he get any No. 12? A. Because he was buying pens from us.

XQ432. He is a dealer? A. Yes.

XQ433. May that not be a pure accident? A. I don't think so. I think he was simply taking in in exchange for a Waterman Ideal—giving a man a Waterman Ideal.

XQ434. He dealt in the pen? A. Very recently. 663

XQ435. How long has he been dealing in the pens? A. If you will give me that postal card (referring to postal card). Not more than thirty days before that.

XQ436. And when he received an A. A. Waterman pen he thought it was an L. E. Waterman pen? A. He sent us that pen as one of ours for exchange.

XQ437. You do not claim that anybody deceived him in regard to this? A. I don't know whether anybody deceived him or not. All I know is that he sent that in as one of our pens.

XQ438. You do not claim that he did not know that there were two firms? A. It is quite evident that he did not know or he would not have done it.

XQ439. That is your inference from the card? A. No, that is not all. There is another card?

XQ440. Where is it? A. I think I can find it (the witness looks for a card).

XQ441. You do not find the postal card? A. No.

XQ442. Referring to Exhibit 37, where Mr. Newton says that Mr. Bowden gave him a pen, an A. A. Waterman pen, in an L. E. Waterman box. Do you have any information except such as is contained in this letter? A. No.

XQ443. The box is very old, much worn; is not that true—apparently a second hand box? A. The box looks as if it had some use.

665

XQ444. Very much blotted with ink as if it had lain around the office? A. Does he say there what date he got that pen?

XQ445. "Last week," he says it was bought and presented to the Tecumseh Hotel last July—and this is dated in April? A. He had it probably a year.

XQ446. You have no information where Mr. Bowden got that pen? A. No.

XQ447. Or whether he bought the pen in one place and the box in another? A. Mr. Bowden simply said that he had a present.

XQ448. Mr. Newton says he got it as a present? A. No, I have no information.

XQ449. You have no information where Mr. Bowden got it?

666 A. No.

XQ450. Referring to the letter of Cormier to L. E. Waterman Company wherein he says, "Pen slides on paper without writing; ink bubbling in tube, to prevent flow of ink." What was the matter with that pen? A. Let me see the letter (referring to letter) I would say it was made wrong.

XQ451. In what way? A. I am not telling how to make fountain pens here.

XQ452. What was defective in it? A. He tells you the defect right here, that it did not write.

XQ453. What was the matter with it that it did not write? A. Because it was not made right.

XQ454. Can you tell in what manner it was not made right? A. I am not telling how to make fountain pens.

XQ455. Might it not have been merely from the fact that the pen was too stiff for the man? A. I would not say so. That would not be my impression, no. I could not explain to you how to re-make that pen and make it write.

XQ456. Are there not hundreds of people that come back to you and say that pens do not suit their hand and they want another? A. But they don't say it does not write, if it does not suit their hand.

XQ457. Are there not a great many pens that do not write, from one defect and another, where that is very easily adjusted? A. Speaking of fountain pens in general? 668

XQ458. Yes? A. A good many of those that come back are not made right.

XQ459. Does that refer to the pen point or to the pen? A. It might refer to both.

XQ460. And it is common to all makes? A. No, I would not say that it is common to all makes. Our pens write.

XQ461. Don't any of them come back and they complain of their not writing? A. Not unless there is an accident they do not.

XQ462. May an accident have occurred to this man's pen? A. No, he tells you right there; he gives you some idea of the trouble he has.

XQ463. But it may have been an accident so far as you know may it not? A. I couldn't tell you that. 669

XQ464. The pen might have got a little twist in some way that is very easily fixed? A. No, I would not say that he could fix it.

XQ465. You don't remember that particular pen or what was the trouble with it, do you? A. I have been having pens stamped A. A. Waterman & Co. that come back to us and they do not write and they do not give satisfaction.

XQ466. You do not remember this particular pen at all? A. Yes, I do remember that particular pen.

XQ467. What did you do with the pen—sent it back to the man to fix it? A. No, told him to take it back to the people he bought it from.

XQ468. Do you know from whom he bought it? A. No.

XQ469. Referring to Exhibit 34 where two pens were sent by Gibson & Huyck to you; one of them was an Ideal and one was an A. A. Waterman, was it? A. If you will give me the letter (referring to the letter) yes.

XQ470. Is there anything in the letter or on the letter to indicate that an A. A. Waterman pen was sent to you at all? A. There is nothing on the letter there but I remember the
671 circumstance because of the complaint that the man made afterwards.

XQ471. Do you remember what was the matter with the A. A. Waterman pen? A. Yes, we supplied him a gold pen.

XQ472. What was the matter with the L. E. Waterman pen? A. I don't recollect just what was the trouble. I think he simply exchanged or something to that effect. I don't remember.

XQ473. The letters say "to be repaired"? A. That might be.

XQ474. The repairs of the L. E. Waterman pen are apt to be about the same as the A. A. Waterman pens? A. No.

XQ475. What is the difference? A. The difference comes in the repairs, and the defects.

XQ476. In what way are the A. A. Waterman pens defective as compared with the L. E. Waterman pens? A. The customers
672 complain that they do not write, and give trouble, as I have testified farther back.

XQ477. That is all that you can say? A. What?

XQ478. You cannot point out in what manner the A. A. Waterman pens are defective as compared with the L. E. Waterman pens? A. I could point out.

XQ479. Name them? A. I am not making A. A. Waterman & Co. pens.

XQ480. But you say in one breath they are defective and when I ask you to say how they are defective you don't seem to be able to tell? A. I base it on the complaints that customers make that they do not write.

XQ481. You have examined the A. A. Waterman pens and as an expert ought to know how they are defective? A. I say the pens do not write.

XQ482. Can you explain in what way an A. A. Waterman pen is defective as compared with an L. E. Waterman pen? A. The people that buy them complain that they do not write and give them satisfaction.

XQ483. That is all that you can say is it upon an examination of the pen; you cannot point out any difference? A. They are not made right.

XQ484. Where one is defective as compared with the other? A. There is no accuracy about the flow in the pen.

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XQ485. How many have you ever examined? A. I have examined a good many.

XQ486. And those were all those that had been sent in for repair? A. No, I have examined them in dealers' stock.

XQ487. How many have you ever examined in dealers' stock? A. I could not tell the exact number but quite a number.

XQ488. How many is quite a number? A. There might be four or five; there might be a dozen.

XQ489. In your whole life? A. No, you are speaking of Canada now I understand.

XQ490. Either one? A. I have examined quite a number.

XQ491. How many do you mean by quite a number? A. I could not give the exact number but a good many.

675

XQ492. How many new A. A. Waterman pens have you ever examined? A. New ones?

XQ493. Yes? A. I have examined a good many hundred.

XQ494. What defects did you find in those "A good many hundred"? A. I am not telling them how to make their fountain pens.

XQ495. What defects did you find in those that you examined? A. In my opinion they will not feed properly and they do not write right.

XQ496. That is all that you can say is it? A. From my knowledge in dealing in fountain pens and making fountain pens and repairing them they are made so that they cannot be depended upon.

676 *Edward J. Kastner*

XQ497. And your judgment is basd on the very few that you examined? A. No, I understand that they are all alike.

XQ498. Are all the L. E. Waterman pens alike? A. No.

XQ499. You know well enough that L. E. Waterman pens of New York, are made by different people, and simply assembled here, don't you? A. That they are made by different people?

XQ500. Yes? A. No, I don't know that.

XQ501. You know in New York they do not make the holders at all? A. I know that they make their holders at Seymour and that Mr. Ferris has the supervision of the manufacture of the holders at Seymour.

677 XQ502. You know the L. E. Waterman Company have no particular interest in the Seymour factory except to purchase their products? A. No, I don't know anything about that.

XQ503. You know they do not manufacture all their pen points here in New York? A. I don't know whether they do.

XQ504. Do you know when you were here in New York five or six years ago and ten years before that, that they did make their own pen points? A. I knew they made their own pen points a good many years.

XQ505. And that they bought a good many? A. I think they bought some.

XQ506. And they bought from a good many manufacturers? A. I don't know how many manufacturers.

XQ507. But a large number? A. I would not state that.

678 XQ508. But they did not pretend to manufacture the whole pen themselves? A. Yes, I would say they manufactured them because every part and every piece that was made, was made under Ferris' supervision.

XQ509. If they bought a pen point in Massachusetts and a holder in Connecticut and simply put them together in New York would you say they manufactured the pen? A. If they had the parts made for them, the same as a man might buy wood to make a cabinet or a show case and they are made of wood and glass.

XQ510. You consider the complete pen point and complete holder as not a manufactured product but a crude primary pro-

duct? A. As far as the fountain pen is concerned it has to be assembled.

XQ511. Then your idea of the manufacture of a pen is simply to put the parts together? A. Not necessarily so. We make the complete pen in Canada.

XQ512. But they do not in the United States? A. As far as I know they do.

XQ513. As far as you know they did not when you were with them here? A. They made their own gold pens. They have made them for a long time and Mr. Ferris was at the factory right along, and having holders made—the same thing.

XQ514. He would be up there one day in a month in Connecticut? A. It would be about the same as he comes to Canada, once a month, sometimes more frequently. 680

XQ515. Then you would call it that one day in a month in Canada he is supervising the manufacture of everything up there? A. He is looking over it.

XQ516. I call your attention to this Exhibit (of Chalmers to L. E. Waterman, Exhibit 33 and I ask you if there is anything in that letter or on that letter to indicate that there was an A. A. Waterman pen forwarded with it? A. No.

XQ517. Is there anything in the letter or on the letter to indicate what was the matter with that particular pen that was sent on? The letter says "One requires a new cap and the other to substitute a new hard fine pointed nib?" A. No, excepting what is called for there. 681

XQ518. Do you think one of them was an A. A. Waterman pen? A. I know one of them was an A. A. Waterman pen.

XQ519. How do you know it? A. I remember the circumstance.

XQ520. What did the A. A. Waterman pen want—a new cap or a finer nib? A. It needed a new cap.

XQ521. You do not claim that any pen is defective because a cap has to be renewed? A. No.

XQ522. I call your attention to this Exhibit 32 and ask you if there is anything in that letter or on that letter to indicate that

it was related to an A. A. Waterman pen? A. No, he speaks of a Waterman Fountain Pen.

XQ523. How do you know what pen came with it? A. I remember the pen.

XQ524. What he complains of there was simply that it did not happen to suit his hand; is not that about right? It did not feed quite freely enough? A. He says when he wants to write fast it does not let the ink down.

XQ525. What was the matter with the pen? A. I would say its construction.

XQ526. In what manner was the construction bad? A. The
683 feed could not be depended upon.

XQ527. It seems that it wrote all right when he wrote slowly but not all right when he wrote very fast? A. That is easy. If the depth of the feed was not sufficient or was not made right, it would not write fast.

XQ528. Don't you know that could be adjusted in one minute? A. No.

XQ529. And yet you claim to have been connected with the manufacture of pens yourself? A. Yes.

XQ530. If the pen had been a little bit too stiff might not that account for it? A. If it was too stiff why would it write when he wrote slowly?

XQ531. Don't you know that when a man writes slowly and presses down hard the pen may write and not write when he
684 writes very fast and presses less hard? A. No, some men write faster and press harder.

XQ532. Here is one of Wotherspoon's, two of them, Exhibit 31, wherein Mr. Wotherspoon says, "The pen seems to be clogged up. I would be obliged if you would clean it and return it to me." Do you consider that a very unusual or a very serious defect in a pen, that it is clogged? A. The man might not know what was the matter with it.

XQ533. Do you remember this particular pen? A. Yes.

XQ534. Do you know whether it was clogged up or not? A. It was not clogged up.

XQ535. Any pen can be clogged up with dirty ink and you simply wash it, soak it a little? A. Yes.

XQ536. What was the matter with this particular pen? A. It was the same as the rest of those pens. It simply would not work for him.

XQ537. And you cannot explain what was the matter? A. It did not suit him. It did not write.

XQ538. You cannot tell what was the matter with that pen? A. With that particular pen?

XQ539. Yes? A. It was made wrong.

XQ540. How was it made wrong? A. There the man tells you how it will not work.

686

XQ541. How was it made wrong? A. Evidently it did not feed right.

XQ542. You don't remember particularly from your own personal knowledge what was the matter with it? A. I remember it was a pen of the same construction as those others that came in.

XQ543. Do you know what you did with that pen? A. Yes, we sent it back.

XQ544. Did you fix it? A. No.

XQ545. You would not fix it? A. I sent it back and told him to send it to the one that he secured it from.

XQ546. That was your habit, whenever you got an A. A. Waterman pen, to send it back? A. No.

XQ547. Is there anything in these letters or on them to indicate that there was an A. A. Waterman pen accompanying it? 687
A. No, but I remember.

XQ548. You have to depend in each instance upon your unaided memory, do you? A. No, I can get the repair slips of them all.

XQ549. When did you look at those repair slips? A. Not long ago.

XQ550. How long ago? A. A few days ago.

XQ551. How many days ago? A. Some of them I looked at —the last one, with that postal card that we have missed—about ten days ago.

688 *Edward J. Kastner*

XQ552. When did you look at the repair slip relating to the pen indicated in Exhibit 31? A. I think it was last week; Thursday or Friday, something like that.

XQ553. Did you take it out on purpose to testify? A. No, I worked that night and went over the files, different things.

XQ554. This letter is dated November 7, 1910. You got out that old repair slip just before you came down? A. We have all the repair slips filed away, so it is not a difficult task to get them.

XQ555. And you got this particular one out before you came down? A. Yes, to refresh my memory.

689 XQ556. And you did not bring it? A. No, I did not think it necessary.

XQ557. Having refreshed your recollection so recently will you tell us what was the matter with this particular pen? A. Just what the man said.

XQ558. What did the man say? A. The man said it did not work right.

XQ559. What was the matter with the pen that it did not work right? A. It might not work right for a dozen different reasons. I would say it was not made to work right.

XQ560. In what respect was it not made to work right? A. The feed could not be depended upon, just as he says.

XQ561. Do you have a repair slip when you do not repair? A. Yes, we make a slip out as to what we have done.

690 XQ562. Are you sure of that? A. Positive.

XQ563. Can you produce any repair slips where you did not do the repairs? A. Everything as it comes in is put on a green sheet. That is the first thing we do; the man's name and all about it. That record is never thrown away. If the pen is returned without repair it is so stated.

XQ564. Why do you go through the pen and find out what was the matter when you have no intention of repairing it? A. I would not say we had no intention of repairing it.

XQ565. But you did send it back without repair? A. Yes. Our trouble is that when we adjust a pen and send it back the

man holds us responsible for working satisfactorily and if it is not made right we don't want to be held responsible for it.

XQ566. And yet you keep a repair slip of pens that you do not repair? A. We keep a record slip. It is marked "Repair slip."

XQ567. What do dealers in A. A. Waterman goods usually call those pens? A. In the instances that I have referred to, they call them Waterman fountain pens.

XQ568. How long has that been the case—since you can remember? A. I have known instances where they called them Waterman fountain pens and thought they were ours.

XQ569. (Question repeated)? A. I should think it was within the last five or six years, where I have come in contact with them. 692

XQ570. Didn't you come in contact with them many more years ago than that? A. Oh, yes.

XQ571. Is it not a fact that if a man way back ten or twelve or fifteen years ago was dealing in A. A. Waterman pens that he would usually call them Waterman pens? A. No, I could not say.

XQ572. Have you not known of such instances? A. I have known of people who have purchased pens believing they were buying Waterman Ideal Fountain Pens.

XQ573. Back ten or fifteen years ago when a man was selling A. A. Waterman pens exclusively what did he call them? A. I don't know when he was selling them exclusively. 693

XQ574. Then you don't know what dealers in A. A. Waterman pens called them? A. I said within the last six years these dealers—it has come to my attention of people who have purchased them, purchased them as Waterman pens and dealers who have sold them at Waterman pens referring to our advertisement and as pens made by us.

XQ575. But you do not give any special instances. Give an instance? A. Where a customer has purchased them?

XQ576. Yes? A. Mrs. Gratton.

XQ577. July 4th? A. No, that is another one.

694 *Edward J. Kastner*

XQ578. You said you did not see it personally and see her personally? A. No, I did not see her personally.

XQ579. Then how can you say that you knew it? A. I knew Mrs. Gratton said so.

XQ580. How do you know it? A. From a report that I had.

XQ581. That is the only way, what somebody else told you? A. No, I had it where I saw it.

XQ582. In relation to Mrs. Gratton it was what somebody else told you, was it not? A. Yes.

XQ583. When was the factory established in Montreal? A. We have been assembling goods there a long time, all my time
695 there but the actual building, where we are now, that part of the factory, I think it was over two years.

XQ584. Before that you merely assembled parts? A. We assembled parts, yes.

XQ585. Where did you get your holders? A. We got some holders from H. P. & E. Day.

XQ586. Where did you get your pen points? A. L. E. Waterman Company.

XQ587. Then it is only within the last two years that you have been manufacturing everything in Canada? A. It may be over two years.

XQ588. When the new factory was established? A. When the new factory was established. We have made parts.

XQ589. Before that you were assembling? A. We assembled
696 the parts.

XQ590. You got your pen points from L. E. Waterman Company, New York? A. Yes.

XQ591. You don't know where they got them? A. No, not those particular pen points.

XQ592. Did you ever Exhibit any pens for medals in Canada? A. Yes.

XQ593. When? A. In Halifax. I don't remember the year.

XQ594. When was it? A. Two years ago.

XQ595. Where did you get the pens to exhibit? A. We had them there.

XQ596. You had them in Montreal? A. Yes.

XQ597. From whom did you buy the holders? A. We had a stock of pens which L. E. Waterman Company had there.

XQ598. Those pens were exhibited in Halifax? A. Yes.

XQ599. You don't know who made the holders? A. Yes, H. P. & E. Day made the holders.

XQ600. Who made the pen points? A. I don't know.

Mr. Bacon: I move to strike out all of the exhibits offered in evidence today on the ground that they are incompetent, irrelevant and immaterial and have no relation whatever to this defendant. And for the same reason I move to strike out all of this witness' testimony on 698
the ground that none of it relates to any transaction with the defendant; and especially to strike out all that part of the testimony which relates to conversations with other people.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ601. Can you by looking at this slip refresh your recollection as to the name of the pen clerk at Granger Freres that you have referred to (handing witness the paper)? A. Yes.

RDQ602. Please state it on the record? A. J. Pineaut.

RDQ603. This is the pen clerk of Granger Freres that you referred to as in charge of the sale of their fountain pens? A. 699
Yes.

RDQ604. You have stated in your cross-examination in answer to questions by defendant's counsel that there was a letter from the Postmaster regarding the mixing up of mails. Is the letter that I show you the one that you referred to in your cross-examination (showing witness a paper)? A. Yes.

RDQ605. It is addressed to Messrs. Davidson & Wainwright, Advocates, Montreal. Who are they? A. They are the L. E. Waterman, Ltd. lawyers.

RDQ606. Have you the other communications referred to in this letter? A. I have not them here.

700 *Edward J. Kastner*

The letter referred to by the witness is offered in evidence and marked Plaintiff's Exhibit No. 46.

Mr. Bacon: Objected to as incompetent, irrelevant and immaterial and not related to the defendant.

Mr. Watson: Counsel for plaintiff calls the attention of the Court to the fact that defendant's counsel asked for this letter.

RDQ607. In your experience with pens marked A. A. Waterman & Co. have you found that these pens have defective feeds or defective feeding devices? A. Yes.

RDQ608. Have you found that they have leaky joints? A.
701 Yes.

RDQ609. Is it not a fact that a large proportion of the A. A. Waterman & Co. pens marked A. A. Waterman & Co. which you have seen, have a joint near the nozzle? A. Yes.

RDQ610. That is about half an inch or about that, from the lower end of the holder? A. The pen point of the holder, yes.

RDQ611. Do you have complaints about the defective feeds and leaky joints? A. Yes.

RDQ612. The feeding device is a very important part of a fountain pen? A. Yes.

RDQ613. The adjustment of the parts is a very essential element in their manufacture is it not? A. Yes.

RDQ614. What do you mean by adjustment? A. I mean by
702 adjustment that the set of the pen is made to conform to the feed bar, and the feed bar shaped, so that it lies alongside the gold pen, so as not to stand away from it. The adjustment of the feed from the point of the gold pen should be put in a certain position so as to assure a steady flow and respond to the opening of the gold pen.

RDQ615. In the pens marked A. A. Waterman & Co., New York, which you have examined, have you found this adjustment was proper? A. The pens that I have examined do not seem to be adjusted carefully and there does not seem to be any regular place for the feed to be put.

RDQ616. Did you ever know at any time, any where, any person to ask for a Waterman pen and give you any information or indication that he expected to buy or purchase or receive a pen marked A. A. Waterman & Co.? A. No.

RDQ617. And when people call for pens marked A. A. Waterman & Co. do they in all cases come to your attention and give you to understand that they were referring to pens of the plaintiff's manufacture? A. Yes.

RDQ618. Did you ever see anywhere at any time a fountain pen marked Waterman without other distinguishing marks or initials? A. Yes.

RDQ619. Except those manufactured by the plaintiff? A. No. 704

RDQ620. Or the L. E. Waterman Company, Ltd.? A. No.

RDQ621. Did you ever see at any time or any where a fountain pen, except those manufactured by the plaintiff and the L. E. Waterman Company, Ltd., that were marked Waterman's without other distinguishing initials or marks? A. No.

RDQ622. While you were connected with the L. E. Waterman Company of New York did you have any familiarity with the so called middle joint pen marked A. A. Waterman & Co.? A. Do you mean did I ever come in contact with them?

RDQ623. Yes? A. Yes.

RDQ624. Did you find, or even see, these pens broken at the middle joint?

705

Mr. Bacon: Objected to as it relates to a period before the organization of the defendant.

A. Yes.

RDQ625. How many of these did you see? A. I have seen a good many.

RDQ626. Tens or hundreds or thousands? A. Within the hundreds, easy enough, I have seen in my time.

706 *Edward J. Kastner*

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ627. Where did you see hundreds of Waterman pens broken at the middle joint? A. In my time I have seen hundreds.

RXQ628. Have you ever seen an L. E. Waterman pen broken at the joint under the finger? A. Yes.

RXQ629. And hundreds of them? A. In my time, yes.

RXQ630. And you have known of a great many complaints of people, as to the joint under the finger, because it leaked and got the finger dirty? A. I have known complaints that the people had of the pens leaking.

707 RXQ631. It is not confined to any one pen, that it leaks, is it? A. Some of them leak much more than others.

RXQ632. The feed is a part of the holder is it not? A. The feed is made of rubber.

RXQ633. And is manufactured by Day of Connecticut? A. The rubber parts are all made by Day.

RXQ634. And not by the L. E. Waterman Company? A. The L. E. Waterman Company, Ltd. manufacture their feed.

RXQ635. But not the L. E. Waterman Company of New York? A. I don't know what they are doing there.

RXQ636. Can you give the name of any person who ever complained to you about a defective feed of an A. A. Waterman pen? A. I have got letters there that they complained about it.

708 RXQ637. What was the name of any man who made such a complaint? A. There are letters there now that people said they did not write.

RXQ638. Can you give the name of any person who has made that complaint? A. This man Wotherspoon speaks of the pen not writing.

RXQ639. Are you prepared to say that came from a defective feed? A. I would say in my opinion the feed was not made so that it could be depended upon.

RXQ640. Are you willing to swear that it came from a defective feed? A. I am willing to swear that in my opinion the feed is not made so that it can be depended upon.

RXQ641. That is not an answer (last question repeated)? A. I am willing to swear that my opinion is that it came from that.

RXQ642. Then it was not from the fact that the pen point was not right? A. No, I would not say it was the pen point.

RXQ643. Can you give the name of any man who made a complaint that an A. A. Waterman pen had a leaky joint? A. Yes, some of those letters refer to it.

RXQ644. Give the name of one? A. I cannot remember without looking at the letter.

RXQ645. Are you sure that any of the letters refer to a leaky joint? A. Yes, I think a man complained of a pen leaking.

710

RXQ646. Can you give the name of any man, outside of the letters, who ever complained of a leaky feed or a leaky joint? A. I have no occasion to remember those names.

RXQ647. The feed depends on a certain position, as you stated, of certain parts of the pen, the L. E. Waterman pen. Is not that true of the A. A. Waterman pen? A. It might be to some extent but if the feed is not made right it would not write any way.

RXQ648. Every feed has to be adjusted does it not? A. The feed should be adjusted, if it is intended to write.

RXQ649. In the manufacture of pens do you adjust the parts by hand or do you have a gauge? A. We shape it by heating it.

RXQ650. Do you adjust the feed by heating? A. Yes, to the gold pen.

711

RXQ651. What is your description of the feed? A. It is the part, the rubber part, that the ink goes through, that lies on the underside of the gold pen.

RXQ652. It is a rubber tongue? A. Ours is not a tongue.

RXQ653. A rubber round bar? A. A groove, a fissure.

RXQ654. You have to have an experienced man to put in the feed bar? A. We do have experienced men for that.

RXQ655. And if it is not just right, then they shape it so as to get it in the right position? A. They shape it to the gold pen.

RXQ656. They do not heat it in every instance? A. Yes.

RXQ657. The adjustment of the feed is done by hand is it not? A. Yes.

RXQ658. And every man has to depend upon his eye in the adjustment of the feed? A. He uses a magnifying glass.

RXQ659. He uses his own judgment and determines just when it is in the right place? A. No, he has a place to put it; there is a regular place to put it, just as a gold pen is shaped.

RXQ660. It depends on the skill of the man that puts it in? A. Yes. It depends on the skill of the man.

RXQ661. That is all? A. It is a skilled man that assembles it.

RXQ662. It does not depend on the feed itself? A. Yes it
713 does.

RXQ663. Is there any difference between the feed of the L. E. Waterman and the A. A. Waterman? A. Yes.

RXQ664. What is the difference? A. The difference is that the L. E. Waterman feed is made with a groove or fissure, but some of the A. A. Waterman pens that I have examined, there is a round piece of rubber lying in the bottom. In others there is a very shallow groove or fissure that would hardly be called a fissure.

RXQ665. How many A. A. Waterman pens have you examined in the last six years? A. I could not tell the exact number. It has been about on the same basis as I have testified to.

RXQ666. How many new A. A. Waterman pens have you examined in the last six years? A. I have examined, in some in-
714 stances, as many as a dozen, in a dealer's stock.

RXQ667. What dealer's stock? A. O. W. Barwick's stock, in Montreal.

RXQ668. Did you examine each pen? A. Yes.

RXQ669. What did you do to each pen as you examined it? A. I took it apart.

RXQ670. Took it all apart, took the feed out? A. Yes.

RXQ671. How many? A. I should say perhaps a dozen.

RXQ672. When? A. At different times. I could not give you the exact date. I have called on Barwicks quite frequently.

RXQ673. How many did you ever do at one time? A. It might be a dozen.

RXQ674. A dozen in one day? A. Yes, in one day.

RXQ675. How many have you ever examined in all from his stock? A. I don't know; I could not tell the exact amount.

RXQ676. About how many? A. I might examine two or three, at different times, as I would go in there.

RXQ677. Are you sure you have examined a dozen at one time? A. Oh, yes.

RXQ678. Why did you make this examination? A. I wanted to see whether there was any difference in the feeds.

RXQ679. When did you do this? A. I could not give you the exact date.

RXQ680. About when? A. I don't remember just about 716
when. I am back and forth by his place there.

RXQ681. Within a year? A. Yes.

RXQ682. Before a year? A. No, within a year.

RXQ683. Does he sell the L. E. Waterman pen? A. Yes.

RXQ684. What kind of A. A. Waterman pens does he sell? A. Those that I examined were Safety—self-filling Safety pens.

RXQ685. The self-fillers with a sack? A. Yes, they have a sack, sure.

RXQ686. That was the only kind that you examined at that time? A. No.

RXQ687. What other kinds have you examined? A. I have examined the different kinds that I have seen there.

RXQ688. What different kinds? A. I have seen the middle
joint. I have seen the joint near the pen point. 717

RXQ689. And the Lincoln pens? A. I have not examined Lincoln pens. I have seen Lincoln pens come and examined them that way; not with a dealer's stock.

RXQ690. You stated as I take it from my notes, that there was no regular place for the feed to be put. What did you mean by that? A. I did not state that.

RXQ691. When the holders come from Connecticut are the feeds separate from the body of the holder? A. They were not when I was here.

RXQ692. They were all in place? A. They were all in place.

RXQ693. You did not take the feed out? A. Yes, I took it out.

718 *Edward J. Kastner*

RXQ694. And put it in again? A. Put it in again.

RXQ695. When you put in the gold pen? A. Before.

RXQ696. Before you put in the gold pen? A. We examined it, yes.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ697. Is it a fact that you have come across a great many pens marked A. A. Waterman & Co. that had leaky joints? A. Yes.

RDQ698. How long has this defect come to your attention?
719 A. It has come to my attention frequently, right along.

RDQ699. You testify that the rubber parts of pens made by the L. E. Waterman Company of New York, are made in Seymour. Under whose direction and supervision are those rubber parts made? A. When I was here they were made under Mr. Ferris' supervision.

RDQ700. When you were here in New York under whose supervision or instruction were any gold pen nibs that were purchased of other makers, made? A. Under Mr. Ferris'.

RDQ701. Did you ever know of any gold pen nibs made for the L. E. Waterman Company, New York, which they used in Waterman's Ideal Fountain Pens, that were made without his supervision? A. No.

720 *RE-CROSS EXAMINATION by Mr. Bacon:*

RXQ702. How do you know that he supervised the making of these gold nibs? A. Because I have gone with him.

RXQ703. How often? A. How often did I go with him?

RXQ704. Yes. A. Only once in a while.

RXQ705. What do you mean by once in a while? A. Perhaps once in a month.

RXQ706. He swore that he only went to Connecticut once a month? A. This is gold pens you are talking about.

RXQ707. Where were gold pens made? A. I went with him in New York.

RXQ708. Where? A. Mabie Todd.

RXQ709. Where else? A. Armeny and Marion and Fairchild.

RXQ710. Who else? A. Those are the places I went with him.

RXQ711. How often did you go to each place? A. I did not go very frequently. I went every now and then just as I stated.

RXQ712. How long did you stay? A. Sometimes it would take a couple of hours before we would get through.

RXQ713. What were you doing when you were there? A. We were examining the pens, the way they were made, and Mr. Ferris was giving instructions how to make them, how to grind 722
them, how to look after the slits in the pens.

RXQ714. You did not stay to see those workmen do those things? A. Yes.

RXQ715. You would stay an hour? A. We would stay in some cases two hours. Mr. Ferris used to go there.

RXQ716. You don't know where he went except what he told you? A. That is all.

RXQ717. How often did you go to Connecticut on the rubber business? A. I went to Connecticut a few times. I don't remember how many times.

RXQ718. How long did you stay? A. I would stay the day.

RXQ719. What did you do when you were there? A. Went to see how the holders were turned, instructed them how to turn
the joints and make the feeds. 723

RXQ720. And you presumed to give instructions to those people who were making those things all the time for yourself and other parties? A. Certainly.

RXQ721. You have just said that you noticed a great many leaky joints in the A. A. Waterman pens. How many is "A great many"? A. I would say, of those pens that came back with the joint at the shoulder, that three quarters of them leaked at the joint.

RXQ722. That is under the finger? A. Yes.

RXQ723. How about the middle joint? A. The middle joint broke.

724 *Edward J. Kastner*

RXQ724. How many broken middle joints have you ever seen in your life? A. I have seen a good many hundred.

RXQ725. How many in the last six years? A. I could not tell you the exact amount.

RXQ726. How many? A. I could not give you the exact figure.

RXQ727. Can you give me any idea whatever? A. I can give you an idea in this way, that a big percentage of the middle joint pens that come to us are broken in the center.

RXQ728. What proportion of A. A. Waterman pens coming to you are middle joints? A. Perhaps twenty-five per cent.

725 RXQ729. And you get in about one or two a day on an average? A. Yes, it is hard to give the exact amount.

Deposition closed.

Signature waived.

Adjourned to Wednesday, March 29, 1911, at 10 A. M.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

726

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.
} In Equity.

New York, March 29, 1911.

Testimony taken on behalf of the complainant at final hearing before Frederic M. Adams, an examiner of this court, at the office of Watson & Raymond, 10 Wall Street, New York, the

29th day of March, 1911, at 10 o'clock in the forenoon, pursuant to notice hereto annexed.

Met pursuant to adjournment.

Appearances:

Samuel S. Watson, for Complainant.
Alexander S. Bacon, for Defendant.

Mr. Watson: The post card referred to by the witness Kastner in connection with Plaintiff's Exhibit 39, which consisted of communications in connection with the transaction with the Neudorf Drug & Book Company has been found and plaintiff offers it in evidence as a part of Exhibit 39. 728

Same objections.

WILLIAM HILL KERNAN, a witness called on behalf of the plaintiff, being duly sworn testified as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, place of residence and occupation? A. William Hill Kernan; 1709 Ocean Avenue, Brooklyn, New York. I am connected with the L. E. Waterman Company.

Q2. At the New York Office? A. At the New York office, 173 Broadway.

Q3. In what department of their business are you? A. I am in the wholesale department. 729

Q4. You are in the wholesale selling department? A. Wholesale selling department, yes.

Q5. How long have you been connected with the L. E. Waterman Company? A. Fifteen years.

Q6. How long have you been connected with the wholesale selling department? A. In my present capacity five years.

Q7. What is your present capacity? A. I have charge of the wholesale department at present.

Q. How long altogether have you been connected with the selling department of the L. E. Waterman Company? A. About seven years.

730 *William Hill Kernan*

Q9. Prior to that time were you connected with the selling department of the business, or what department of the business? A. I served in various capacities.

Q10. Were you selling goods prior to seven years ago for the L. E. Waterman Company? A. I had sold.

Q11. How long had you been selling goods altogether? A. Altogether about eight years.

Q12. And prior to that in what department were you employed? A. I was in the order department.

Q13. Is not that part of the selling department? A. Yes.

Q14. How long were you connected with that department? A. About two years.

731

Q15. What were your duties prior to ten years ago? A. I served in a number of capacities. I have been pen cleaner and shipping clerk and served in whatever capacity I was designated for.

Q16. Have you ever been in the retail department? A. Not for any length of time; just occasionally.

Q17. Have you ever been connected with the manufacturing department of the L. E. Waterman Company? A. No, sir.

Q18. Since you have been connected with the selling department of the L. E. Waterman Company what are the names that customers ask for or order Waterman's Ideal Fountain Pens? A. They call for Waterman pens, Waterman's Fountain Pens, Waterman Ideal Fountain Pens.

732

Q19. Do they sometimes call them Ideal pens? A. Occasionally.

Q20. What is the name generally used? A. Waterman's pens.

Q21. How long has that been the case? A. Ever since I can remember.

Q22. All the time you have been connected with the business? A. Fifteen years.

Q23. Did you have any contact with customers prior to ten years ago? A. No, sir, not in a selling capacity.

Q24. Did you handle orders? A. Yes.

Q25. I show you Plaintiff's Exhibit No. 7 and ask you if you are familiar with that pen (handing witness the exhibit)? A. I am familiar with that make of pen, yes.

Q26. That is one of the Waterman Company pens is it not? A. The L. E. Waterman Company, yes.

Q27. Are you familiar with that marking? A. Yes.

Q28. I show you Plaintiff's Exhibit No. 8 and ask you if you are familiar with that pen (handing witness exhibit)? A. Yes.

Q29. Both of those methods of marking pens are used by the L. E. Waterman Company? A. Yes.

Q30. How long? A. As long as I can remember. 734

Q31. Both of them? A. Not both of them.

Q32. Please explain the periods when these markings were used and how? A. This Exhibit 7 is one of the later models.

Q33. How long has that marking been used? A. I cannot say as to the length of time.

Q34. Prior to that time they used the marking of Exhibit 8? A. Yes.

Q35. In what other ways, if you know, have Waterman's Ideal Fountain Pens been marked? A. They have been marked Waterman's and Waterman Fountain Pens and Waterman's Fountain Pens.

Q36. Have they ever been marked Waterman alone on the barrel? A. Yes.

Q37. How long has that been the fact? A. As long as I can 735 remember.

Q38. Are any of the pens manufactured by the L. E. Waterman Company marked Waterman's alone on the barrel? A. Yes.

Q39. How long has that been a fact? A. As long as I can remember.

Q40. Have you ever seen anywhere, at any time, any fountain pens other than those made by the L. E. Waterman Company or L. E. Waterman Company, Ltd., which were stamped and marked with the word Waterman alone without initials or other distinguishing marks? A. Yes. Any other? Will you repeat the question?

736 *William Hill Kernan*

Q41. (Repeated.) A. Yes, I have.

Q42. Who made them? A. Some were made by a party named I. Waterman.

Q43. They had the initial preceding the name did they not? A. They had the initial I. Waterman, yes.

Q44. Do you know whether the manufacture and sale of these pens was enjoined by the United States Circuit Court of this district? A. Yes, I do.

Mr. Watson: Counsel gives notice that he will introduce in evidence a certified copy of the injunction order.

737 Q45. I repeat the question. Have you ever seen any fountain pens other than those made by the L. E. Waterman Company or L. E. Waterman Company, Ltd. which were marked with the name of Waterman alone without any other distinguishing marks or initials anywhere, at any time? A. No, I don't recall it.

Q46. Have you at any time, anywhere, seen fountain pens marked with the name Waterman's alone without other initials or distinguishing marks excepting those made by the L. E. Waterman Company and the L. E. Waterman Company, Ltd.? A. No, sir.

Q47. The L. E. Waterman Company, Ltd. is a subsidiary company of the L. E. Waterman Company, to do its Canadian business? A. I so understand.

738 Q48. You have no personal knowledge of their business? A. No.

Q49. Have you been to their factory in Montreal? A. I have visited it.

Q50. Have any evidences of confusion in the trade, or in the minds of the public, come to your attention, between the fountain pens manufactured by the L. E. Waterman Company and those stamped and marked A. A. Waterman & Co., New York?

Mr. Bacon: Objected to as irrelevant and immaterial and not an issue.

A. Yes, I have had a number of instances of that sort come to my attention.

Q51. In what way? A. In the way that pens stamped A. A. Waterman & Co. were mistaken for the genuine Waterman Ideal Fountain Pen.

Q52. Do people bring them in to you or write to you about them or how do you find this out? A. Both by mail and by means of people bringing them in.

Q53. Can you produce some of the letters or communications that you received which you think show confusion? A. Yes, I can.

Q54. I notice these letters on top that you produce are the ones that were in the record on the motion for preliminary injunction. I show you communications from Mabel Gifford and 740
ask you if the plaintiff received these letters in due course of mail (showing witness the papers)? A. Yes, they did.

Q55. All you know about the matter is what appears in the letters? A. Yes,that is all.

Q56. You never saw Mabel Gifford? A. No, sir.

The letters identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 47.

Mr. Bacon: Objected to as incompetent, irrelevant and immaterial; the signature not verified; confusion not an issue, unless it is caused by some act of the defendant; and these letters are not in any way emanating from or connected with the defendant.

Q57. I show you letters dated December 22, 1909, and Jan- 741
8, 1910, signed D. S. Phleger and I ask you if the Waterman Company received these letters in due course of mail (handing witness papers)? A. Yes, they did.

Q58. All you know about the transaction is what appears in the letters? A. That is all.

Q59. What kind of a fountain pen was received in connection with those letters? A. A pen stamped A. A. Waterman & Co., New York.

The letters identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 48.

Same objections.

742 *William Hill Kernan*

Q60. What kind of a pen was received with the Mabel Gifford letter which you have just identified? A. A pen stamped A. A. Waterman & Co., New York.

Q61. I show you a letter dated September 29th, 1909, signed Henry Hall and ask you if the Waterman Company received that letter in due course of mail (handing witness a paper?) A. Yes.

Q62. Is this the page of the circular to which the letter referred (handing witness paper)? A. It is.

The letter and page of the catalogue identified by the witness is offered in evidence and marked Plaintiff's Ex-
743 hibit No. 49.

Same objections.

Q63. I show you a letter on the letter head of Brentano's, New York dated October 19, 1906, and ask you if that letter was received in due course of mail (handing witness a paper)? A. Yes, it was.

Q64. Does that refer to the plaintiff's business? A. Yes.

Q65. They have had close business connections with Brentano ever since you have been in the business have they not? A. Yes.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 50.

744 Same objections.

Q66. I show you a letter dated January 16th, 1910, signed by L. D. Fairchild and December 30th, 1909, signed by L. D. Fairchild and ask you if you received that in due course of mail (handing witness the paper)? A. Yes.

Q67. What kind of a pen was received in connection with those letters? If you do not remember just say so? A. I do not remember.

Q68. I show you a letter dated October 27th, 1907, signed by typewriter, by J. F. Hardy and ask you if you received that letter in due course of mail (handing witness the paper)? A. Yes.

745

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 51.

Same objections.

Q69. I show you letters dated February 11th, 1911, and March 2, 1911, and ask you if those letters were received in due course of mail (handing witness paper)? A. Yes, they were.

Same objections.

Q70. Annexed to these letters purports to be a wrapper, or a cover that has been through the post office. Did you receive that in connection with the pen that you received mentioned in those letters? A. Yes, we did.

746

The two letters and wrapper identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 52.

Same objections.

Q71. What kind of a pen was received in connection with Plaintiff's Exhibit No. 52? A. A pen stamped A. A. Waterman & Co., New York.

Q72. I show you letters dated December 31, 1910, and January 6th, 1911, and ask you if you received those letters in due course of mail (handing witness papers)? A. Yes.

Q73. What about the slip annexed to these letters; do you know anything about that? A. That is the slip that came in the package.

747

Q74. What was in the package? A. It contained a fountain pen stamped A. A. Waterman & Co., New York.

The letters and covers of the package are introduced in evidence and marked Plaintiff's Exhibits No. 53.

Same objections.

Q75. Have you the pen that came with these letters? A. Yes.

Q76. Is this it? (Showing witness the pen.) A. This is the pen.

748 *William Hill Kernan*

The pen produced by the witness is offered in evidence and marked Plaintiff's Exhibit No. 54.

Same objections.

Q77. I show you letter dated January 11th, 1911, from Edward C. Bowie and ask you if you received that in due course of mail (handing witness the paper)? A. Yes.

Q78. What about the slip annexed to it? A. This slip is the wrapper in which the pen was received.

Q79. Referred to in that letter? A. Referred to in that letter.

749 The letter and wrapper are introduced in evidence and marked Plaintiff's Exhibit No. 55.

Same objections.

Q80. What kind of a pen did you receive in connection with that letter and package? A. A pen stamped A. A. Waterman & Co., New York.

Same objections.

Q81. I show you a letter dated January 16th, 1911, and annexed to it a slip which bears the printed name of G. D. Davidson, 163 Newark Avenue, Jersey City, N. J., and also a fountain pen and ask you if you received these in due course of mail (handing witness papers and pen)? A. Yes.

750 Q82. I note an envelope annexed to these letters; was that the envelope in which the letter was received? A. Yes, it is.

The letter, slip and envelope are offered in evidence and markd Plaintiff's Exhibit No. 56.

Same objections.

The pen received in connection with Exhibit 56 is offered in evidence and marked Plaintiff's Exhibit No. 57.

Same objections.

Q83. Look at the pen and tell me what you find? A. I find that the pen is marked Waterman Ideal Fountain Pen, New York but the cap is stamped "Modern," and is not the one that we originally furnished with the pen.

Q84. The cap is not of the plaintiff's manufacture? A. No, sir.

Q85. I show you a letter dated January 28th, 1910, signed W. H. York and ask you if you received that letter in due course of mail (handing witness paper)? A. Yes.

Q86. What kind of a pen did you receive in connection with that letter? A. I received a pen stamped A. A. Waterman & Co., New York.

The letter identified by the witness if offered in evidence and marked Plaintiff's Exhibit No. 58.

Same objections.

752

Q87. I show you a letter dated July 27th, 1910, with a reply written thereon in long hand signed by D. D. Ewing and ask you if you received the letter, with this reply, in due course of mail (handing witness the paper)? A. Yes, we did.

Q88. The letter is one emanating from the plaintiff? A. Yes.

Q89. The reply purports to emanate from D. D. Ewing, New Orleans, La.? A. Yes.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 59.

Same objections.

Q90. I show you letters dated March 8th, 1910, and March 17th, 1910, signed J. C. Mimms and ask you if the Waterman Company received those in due course of mail (handing witness the papers)? A. Yes. 753

Q91. How about the envelopes annexed, do you know anything about those? A. The envelopes are those in which these letters referred to were received.

The letters and envelopes identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 60.

Same objections.

754 *William Hill Kernan*

Q92. What kind of a pen did you receive in connection with the letter dated March 8th, 1910, Plaintiff's Exhibit 60? A. The pen was one stamped A. A. Waterman & Co., New York.

Q93. I show you a letter dated January 5, 1910, signed Mrs. T. J. Steele, also a post card signed the same way, dated February 14, 1910, and ask you if you received those in due course of mail (handing witness papers)? A. Yes.

The letter and post card identified by the witness are introduced in evidence and marked Plaintiff's Exhibit No. 61.

Same objections.

755

Q94. What kind of a pen did you receive in connection with Plaintiff's Exhibit No. 61? A. A pen stamped A. A. Waterman & Co., New York.

Q95. Do you know anything about this transaction except what appears from the letter and post card and pen? A. Nothing except from the correspondence.

Q96. I show you a letter dated February 1, 1911, signed Walter W. Burdette and ask if you received that letter in due course of mail (handing witness the paper)? A. Yes.

Q97. What kind of a pen did you receive in connection with that letter? A. A pen stamped A. A. Waterman & Co., New York.

The letter identified by the plaintiff is offered in evi-

756 dence and marked Plaintiff's Exhibit No. 62.

Same objections.

Q98. I ask you if you received a pen from A. T. Hoyt dated February 18, 1910, in connection with the writing which I now show you (handing witness the paper)? A. Yes.

Q99. What kind of a pen was that? A. A pen stamped A. A. Waterman & Co., New York.

The writing identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 63.

Same objections.

Q100. I show you a letter dated March 25, 1910, signed V. A. Warren and another letter signed the same way dated April 12, 1910, and ask you if you received those letters in due course of mail (handing witness the papers)? A. Yes.

Q101. Do you know anything about the envelope annexed? A. The envelope is the one in which the letter of March 25, was received.

The letter and envelopes identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 64.

Same objections.

Q102. What kind of a pen was received in connection with those letters? A. A pen stamped A. A. Waterman & Co., New 758
York.

Q103. I show you a post card stamped as going through the Post Office dated November 16th, 1909, signed F. H. Wisewell and ask you if you received that in due course of mail (handing witness the paper)? A. Yes.

The post card identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 65.

Same objections.

Q104. Did the plaintiff ever mark or stamp fountain pens "Lincoln"? A. No, sir.

Q105. I show you letters dated November 24, 1909, and December 2, 1909, signed by C. G. Lee and ask you if they received 759
those in due course of mail (handing witness the papers)? A. Yes.

Q106. What about the envelopes? A. The envelopes are those in which the letters referred to were received.

Th letters and envelopes identified by the witness are offered in evidence and marked Plaintiff's Exhibit 66.

Same objections.

Q107. What kind of a fountain pen did you receive in connection with those letters? A. A pen stamped A. A. Waterman & Co., New York.

760 *William Hill Kernan*

Q108. Have you ever seen Mr. Lee himself personally? A. No, sir.

Q109. Do you know whether anybody from the Waterman Company has ever seen him about the matter? A. I could not say.

Q110. I show you two letters signed by John C. Innes dated October 26, 1909 and November 26, 1909, and ask you if you received those letters in due course of mail (handing witness the papers)? A. Yes.

The letters identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 67.

761 Same objections.

Q111. What kind of a pen did you receive in connection with those letters? A. A pen stamped A. A. Waterman & Co., New York.

Q112. I show you a letter dated October 16th, 1909, signed by George W. Hull and ask you if you received that letter in due course of mail (handing witness the paper)? A. Yes.

Q113. What kind of a pen did you receive in connection with that letter? A. A pen stamped A. A. Waterman & Co., New York.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 68.

762 Same objections.

Q114. I show you a letter dated January 17th, 1910, signed by Jay G. Shumway and ask you if you received that letter in due course of mail (handing witness the paper)? A. Yes.

Q115. What kind of a pen did you receive in connection with Mr. Shumway's letter? A. A pen stamped A. A. Waterman & Co., New York.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 69.

Same objections.

Q116. I show you a letter dated September 8th, 1910, and ask you if you received that in due course of mail (handing witness the paper)? A. Yes.

Q117. What kind of a pen did you receive in connection with the letter you have just identified? A. A pen stamped A. A. Waterman & Co., New York.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 70.

Same objections.

Q118. Do you know anything about Exhibit 70 except what appears on the letter? A. Nothing.

764

Q119. Do you know the writer? A. No, sir.

Q120. Have you ever seen him? A. No, sir.

Q121. I show you a letter dated March 3, 1910, signed R. W. F. Lendrum and also letter dated March 19th, 1910, signed the same way and ask you if you received those letters in due course of mail (handing witness the papers)? A. Yes.

Q122. What kind of a pen did you receive in connection with that letter? A. A pen stamped A. A. Wateman & Co., New York.

Q123. I note an envelope annexed and ask you if you know anything about the envelope? A. The envelope is that in which one of these letters was received.

The two letters identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 71. 765

Same objections.

Q124. I show you a letter dated January 28th, 1911, signed by Teresa Lanyon and ask you if you received that in due course of mail (handing witness the paper)? A. Yes.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 72.

Same objections.

Q125. I show you a letter dated February 7th, 1910, signed O. J. Burkley and another letter signed the same way dated

766 *William Hill Kernan*

January 30, 1910, and ask you if you received those letters in due course of mail (handing witness the papers)? A. Yes.

Q126. How about the envelope annexed? A. The envelope is the one in which the letter of February 7th was received.

The two letters and envelope identified by the witness are offered in evidence and marked Plaintiff's Exhibit 73.

Same objections.

Q127. What kind of a pen did you receive in connection with those letters? A. A pen stamped A. A. Waterman & Co., New York.

767 Q128. I show you a letter dated December 8th, 1910, signed by H. F. Partridge and ask you if you received that letter in due course of mail (handing witness the paper)? A. Yes.

Q129. How about the envelope annexed; do you know anything about that? A. The envelope is one in which the letter referred to was received.

The letter identified by the witness is offered in evidence together with the envelope and they are marked Plaintiff's Exhibit No. 74.

Same objections.

Q130. I show you a letter dated October 13th, 1909, signed by J. O. Hulberg and ask you if you received that letter in due course of mail (handing witness the paper)? A. Yes.

768 The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 75.

Same objections.

Q131. What kind of a pen did you receive in connection with that letter? A. A pen stamped A. A. Waterman & Co., New York.

Q132. I show you a letter without date, but stamped as received November 8th, 1909, signed by Ralph S. Goll, and a letter signed the same way, dated November 11th, 1909, and ask you if you received those letters in due course of mail (handing witness the papers)? A. Yes.

Q133. What kind of a pen did you receive in connection with those letters? A. A pen stamped A. A. Waterman & Co., New York.

The letters identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 76.

Same objections.

Q134. I show you two letters, one dated January 31, and one dated January 10, 1910, signed J. E. Heisler, and ask you if you received those letters in due course of mail (handing witness the papers)? A. Yes.

Q135. What kind of a pen did you receive in connection with 770
those letters? A. A pen stamped A. A. Waterman & Co., New York.

Q136. I note an envelope annexed. Do you know anything about that envelope? A. That envelope is the one in which the letter of January 31 was received.

The two letters and envelope identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 77.

Same objections.

Q137. I show you a letter dated November 22, 1909, signed E. B. Scannel, and ask you if you received that letter in due course of mail (handing witness the paper)? A. Yes.

Q138. What kind of a pen did you receive in connection with 771
that letter? A. A pen stamped A. A. Waterman & Co., New York.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 78.

Same objections.

Q139. I show you a letter dated November 21, 1909, signed H. H. Allen, and another signed the same way, dated January, 1910, and ask you if you received those letters in due course of mail (handing witness the paper)? A. Yes.

772 *William Hill Kernan*

Q140. What kind of a pen was received in connection with those letters? A. A pen stamped A. A. Waterman & Co., New York.

The Letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 79.

Same objections.

Q141. I show you a letter dated May 27, 1909, signed G. H. Newstedt; and also a wrapper or a package bearing a printed label with the name George H. Newstedt, Jeweler, Cincinnati, Ohio, and ask you if you received that letter and wrapper in due course of mail (handing witness the papers)? A. Yes.

773 Q142. What did the package referred to in that letter contain? A. It contained fourteen pens stamped A. A. Waterman & Co., New York.

Q143. Did you also receive a letter from Mr. Newstedt, dated June 8th, 1909, in connection with this matter (handing witness the paper)? A. Yes.

The two letters and wrapper identified by the witness are offered in evidence and marked Plaintiff's Exhibit 80.

Same objections.

Q144. What did you do with the pens that you received in that package? A. I delivered them to A. A. Waterman & Co.,

774 Thames Street, New York.

Q145. Did you deliver them personally? A. Yes.

Q146. I show you a letter dated December 13th, stamped as received December 15th, 1909, and ask you if you received that letter on or about December 15th, 1909, in due course of mail (handing witness the paper)? A. Yes.

Q147. What kind of a pen did you receive in connection with that letter? A. I received a pen stamped A. A. Waterman & Co., New York.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 81.

Same objections.

Q148. I show you a letter dated September 24th, 1909, signed Gulick Tailoring Co., and ask you if you received that letter in due course of mail (handing witness the paper)? A. Yes.

Q149. What kind of a pen did you receive in connection with that letter? A. A pen stamped A. A. Waterman & Co., New York.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 82.

Same objections.

Q150. I show you a letter dated April 11th, 1910, signed Fred. P. Tillson, and ask you if you received that in due course of mail (handing witness the paper)? A. Yes. 776

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 83.

Same objections, ruling and exceptions.

Q151. I show you a letter dated April 25, 1910, signed G. L. Mandaville, and ask you if you received that letter in due course of mail (handing witness the paper)? A. Yes.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit 84.

Same objections.

Q152. I show you a letter dated February 11th, 1910, signed Will S. Cogburn, and ask you if you received that letter in due course (handing witness the paper)? A. Yes. 777

Q153. What kind of a pen did you receive in connection with that letter? A. A pen stamped A. A. Waterman & Co., New York.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 85.

Same objections.

Q154. I show you a letter dated November 19th, 1909, and signed James H. McGrew, and another letter on the same kind of letter head, dated November 29th, 1909, without signatures,

778 *William Hill Kernan*

and I ask you if you received those letters in due course of mail (handing witness the papers)? A. Yes.

Q155. What kind of a pen did you receive in connection with those letters? A. A pen stamped A. A. Waterman & Co., New York.

The two letters identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 86.

Same objections.

Q156. I show you a post card stamped as passing through the mails on January 8th, 1911, and signed May B. Neall, and I ask you if you received that through the mails in due course
779 (handing witness the paper)? A. Yes.

The post card identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 87.

Same objections.

Q157. I show you a letter dated December 6th, 1909, signed George Burgess, and another letter dated December 8th, 1910, signed the same way, and ask you if you received those letters in due course through the mails (handing witness the papers)? A. Yes.

Q158. What kind of pens did you receive in connection with those letters? A. Two pens stamped A. A. Waterman & Co., New York, and one stamped Waterman's Ideal Fountain Pen.
780

The letters identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 88.

Same objections.

Q159. I show you a letter dated January 19th, 1911, signed Felix Klappenbach, and ask you if you received that in due course of mail (handing witness a paper)? A. Yes.

Q160. I notice that there is a paper annexed to this letter by a clip; what is that? A. That is the wrapper in which the pen was received.

Q161. What kind of a pen did you receive in connection with that letter and wrapper? A. A pen stamped A. A. Waterman & Co., New York.

The letter and wrapper identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 89.

Same objections.

Q162. I show you a letter dated January 31, 1911, and signed A. J. Dorn, Jr., and ask you if you received that in due course (handing witness the paper)? A. Yes.

Q163. What kind of a pen did you receive in connection with that letter? A. A pen stamped A. A. Waterman & Co., New York.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 90. 782

Same objections.

Q164. I show you a letter dated January 21, 1911, signed Charles Menges, and another letter signed the same way, dated February 3, 1911, and a wrapper bearing the same name and letter head, and I ask you if you received those two letters and wrapper in due course (handing witness the papers)? A. Yes.

Q165. What kind of a pen did you receive in connection with those letters? A. A pen stamped A. A. Waterman & Co., New York.

Q166. What about the package, the wrapper, do you know anything about that? A. That is the wrapper in which the package was received. 783

The letters and wrapper identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 91.

Same objections.

Q167. I show you a letter dated January 16th, signed Dr. H. R. Bryan, and ask you if you received that letter in due course (handing witness the paper)? A. Yes.

Q168. And from any stamps on the letter can you tell when that letter was received? A. Received on January 20, 1911.

Q169. How do you know it was 1911? A. We always stamp them with the date they arrived.

Q170. Is that letter stamped? A. Yes.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 92.

Same objections.

XQ171. I show you a letter dated January 6th, 1911, signed J. N. Brosius and also a letter dated January 18th, 1911, signed the same way, and also letter dated January 21, 1911, signed the same way, and ask you if you received those letters in due course (handing witness the papers)? A. Yes.

The letters identified by the witness are offered in evi-
785 dence and marked Plaintiff's Exhibit No. 93.

Same objections.

Q172. I show you a letter dated December 30, 1910, signed C. H. Williams; a letter dated January 6th, 1911, signed by the Modern Pen Company, by E. T. K.; a letter dated January 16th, 1911, signed C. H. Williams, and a letter dated January 23, 1911, signed Modern Pen Company by Hobart W. Geyer, treasurer, and I ask you if you received those letters in due course of mail (handing witness the papers)? A. Yes.

Q173. I note an envelope in the package; do you know anything about that? A. That is the envelope in which the letter of January 16th was received from Mr. C. H. Williams.

The envelope and letters identified by the witness are
786 offered in evidence and marked Plaintiff's Exhibit No. 94.

Same objections.

Q174. I show you a letter dated February 27, 1911, signed F. Morrow, and a wrapper showing that it has been through the mails, and ask you if you received those in due course (handing witness the papers)? A. Yes.

Q175. What kind of pen did you receive in connection with the letter and wrapper? A. A pen stamped A. A. Waterman & Co., New York.

Q176. Was it contained in the wrapper? A. Contained in the wrapper attached.

The letter and wrapper identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 95.

Same objections.

Q177. I show you a letter dated December 22, 1910, signed by J. P. Williamson and ask you if you received that in due course (handing witness the paper)? A. Yes.

Q178. What kind of a pen did you receive in connection with that letter? A. A pen stamped A. A. Waterman & Co., New York. 788

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 96.

Same objections.

Q179. I show you a letter dated May 11th, 1910, signed L. L. Spencer and another letter signed the same way, dated April 25, 1910, and ask you if you received those letters in due course (handing witness papers)? A. Yes.

Q180. What kind of pens did you receive in connection with those letters? A. One pen stamped A. A. Waterman & Co., New York, and one stamped Waterman's Ideal Fountain Pen.

The letters identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 97. 789

Same objections.

Q181. I show you a letter dated April 18th, 1910, and April 27th, 1910, signed John T. Hutchinson, and ask you if you received those letters in due course of mail (handing witness the papers)? A. Yes.

Q182. What kind of a pen did you receive in connection with those letters? A. A pen stamped A. A. Waterman & Co., New York.

The letters identified by the witness are offered in evidence and marked Plaintiff's Exhibit No. 98.

790 *William Hill Kernan*

Same objections.

Q183. I show you a letter dated January 17th, 1910, signed by John M. Roberts & Son Co., and ask you if you received that letter in due course of mail (handing witness the paper)? A. Yes.

The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 99.

Same objections.

Q184. All the mail is handled in your department? A. Yes.

Q185. That is where it comes in the first instance? A. Yes,
791 it is distributed from there.

Q186. Opened by a clerk whose desk is near yours, in view of yours? A. Yes.

Q187. Any matters outside of strictly routine matters are referred to you in the first instance? A. Yes.

Q188. Did you handle personally all of these letters that you have identified? A. Yes.

Q189. The only other evidences of confusion that come to your attention are people coming in and offering pens stamped A. A. Waterman & Co. and giving you to understand that they are of the plaintiff's manufacture? A. Yes.

Q190. Did many of these instances come to your attention? A. Quite a number.

792 Q191. Does the paper that I show you refresh your recollection in regard to any one of these transactions (handing witness the paper)? A. Yes, it does.

Q192. Please tell us what happened and all about it as far as you recall it now? A. On September 28th, 1910, Mr. O. E. Shay of Canaseraga, N. Y., called at the office of the L. E. Waterman Company, and in conversation with me, said—

Mr. Bacon: Objected to as hearsay.

A. (Continued.) Stated that he had bought a quantity of pens from the Scranton & Wetmore Company of Rochester, N. Y., bearing the name A. A. Waterman & Co., supposing that they were Waterman's Ideal Fountain Pens.

Q193. Did he tell you what was said to him at the time the pens were sold to him? A. He said the salesman who sold him those and who represented the Scranton & Wetmore Company gave him to understand that they were genuine Waterman Ideal Fountain Pens.

Q194. Did he bring in any of these pens? A. No, he did not.

Q195. Did he tell you how he found out that they were not pens of our manufacture? A. No, I cannot recall that he did.

Q196. Are there any other instances that you can call to mind, if so, please state, as hurriedly as you can, as we are in a hurry to adjourn for lunch? A. There was an instance where a pen was received from John Bingham & Co., 84 Wall Street, New 794
York, on March 21, 1910, that was order No. 2021, which they had sent to us for repair, supposing it to be a genuine Waterman Ideal Fountain Pen. It proved to be a pen bearing the imprint of the A. A. Waterman Co. of New York. This pen was brought to the attention of Mr. J. Everetts of the John Bingham & Co., and he instructed us to repair the pen, stating it would be a convenience and that he did not understand it was not one of ours when he sent it to us.

Q197. Did he state to you that he thought it was ours when he sent it to you? A. Yes.

Q198. Did he say that he sent it to you? A. Yes, he wrote an order and sent the pen.

Q199. Have you any other instances in hand? A. Yes, the 795
case of A. J. Thomson, care of L. Hamberger & Co., 91 Fifth Avenue, New York; on March 9, 1910, he left with us one Waterman Ideal Fountain Pen and one pen stamped A. A. Waterman & Co., thinking that they were both ours and when it was explained that the pen stamped A. A. Waterman & Co. was not made by the L. E. Waterman Company he expressed surprise.

Q200. Was that matter handled by you personally? A. Yes, it was.

Q201. Did a great many other cases come to your attention in the last year or two? A. Yes, numerous cases.

Q202. The letters you produce appear to be all of more or less recent date, extending back about a year, with possibly one

796 *William Hill Kernan*

or two exceptions. Are these all the complaints that you have ever received about A. A. Waterman & Co. pens and the confusion existing between the pens of the plaintiff's manufacture and those marked A. A. Waterman & Co., New York? A. No, sir, those are only a few.

Q203. Have you found this confusion and trouble has increased or decreased of late? A. It has increased of late.

Q204. What do you mean by "of late"? A. Within the last two years.

Q205. Many of the cases that are reported to you, you do not handle them? A. That is true.

797 Q206. And these cases that you have mentioned are some of the cases that you have handled yourself? A. Yes.

CROSS-EXAMINATION by Mr. Bacon:

XQ207. John Bingham & Co. are well known stationers on Wall Street, are they not? A. Yes.

XQ208. They have dealt in A. A. Waterman pens and L. E. Waterman Company pens? A. I don't know anything about the A. A. Waterman & Co. pens.

XQ209. Don't you know that they knew perfectly well the difference between the two? A. The man that I saw did not know the difference.

XQ210. And they sent an A. A. Waterman pen to you by 798 pure carelessness? A. He sent it to us because he thought it was a Waterman Ideal Fountain Pen.

XQ211. It is possible he had not looked at the imprint? A. That I don't know.

XQ212. This Mr. Shay who spoke to you did not tell you the name of the salesman who had sold him his pen? A. No.

XQ213. There is no way of tracing who made these statements to him, so far as you know? A. No, I don't know of any.

XQ214. How old are you? A. Thirty.

XQ215. Then you were fifteen when you were with the L. E. Waterman Company? A. Yes.

XQ216. You never have been employed by anybody else? A. I was employed previously to that.

XQ217. How long? A. About two weeks.

XQ218. That is all? A. That is all.

XQ219. How long have you been in the wholesale department? A. About eight years.

XQ220. And during that time your business has been exclusively in the wholesale department? A. Yes.

XQ221. You were in the order department before that? A. The order department and the wholesale are in the same room.

XQ222. In the same room? A. Yes.

XQ223. Is it your duty to take care of repairs as manager 800
of the wholesale department? A. Yes.

XQ224. Do you receive all of the mail? A. All of the mail that comes in, yes.

XQ225. For the retail department as well as the wholesale? A. All of the mail that is addressed to L. E. Waterman Company.

XQ226. I notice on many of these letters are memoranda in red ink. Did you put those memoranda on yourself? A. No.

XQ227. Was it not from those memoranda that you determined what pen was in any particular letter? A. No.

XQ228. Do you mean to say, with all of these letters that have been introduced this morning you have personal recollection of what pens came in them and the mark on them, without having to refresh your memory? A. I mean to say that the 801
pens referred to in all this correspondence were received with the correspondence and referred to me.

XQ229. And you have a personal recollection of each one of these letters without any reference to memoranda?

Mr. Watson: Objected to because the witness has stated just the opposite.

XQ230. What is your answer? A. I do not recall all those without the memoranda.

802 *William Hill Kernan*

XQ231. And the memorandum was not put on there by you? A. No, but it was put on at the time it was referred to me.

XQ232. Did you see it put on? A. Yes.

XQ233. In each instance? A. In each instance I saw it.

XQ234. Do you mean to say every time that red ink memorandum was put on a letter you saw it done? A. Yes.

XQ235. It was done under your immediate supervision? A. Yes.

XQ236. Whenever an A. A. Waterman pen came in for repair you always repaired it? A. If we could, yes.

803 XQ237. Are there any repairs that you could not make? A. Sometimes we did not have the necessary parts.

XQ238. What part would you lack? A. They varied according to the time it was received.

XQ239. You furnished the sacks if the sacks were injured, didn't you? A. We have furnished some sacks.

XQ240. And you had no trouble in repairing these pens, the same as your own? A. We did have some trouble, because we did not have the right parts.

XQ241. You could always get the right parts by applying to the A. A. Waterman Company, could you not? A. I suppose so.

XQ242. You did not have anything to do with the repairs? A. I did not make repairs personally, no.

804 XQ243. Did you have anything to do with the repairs at all? A. They were handled under my direction.

XQ244. I pick up at random Exhibit 81, "Supply new cap and straighten pen." Did you direct that those words should be put on this exhibit in red ink? A. May I see the exhibit (referring to the exhibit). No, I did not.

XQ245. Then you did not see that put on there? A. I saw the size of the pen and the style of the pen entered on there.

XQ246. Do you mean to say that memorandum was entered at different times? A. No, immediately after the first part was written.

XQ247. How could you tell what repair had to be done without examining the pen? A. I would examine the pen.

XQ248. Each one of these? A. Yes.

XQ249. And that is part of your business as manager of the wholesale department? A. I don't examine all the pens.

XQ250. You examined these particular pens? A. Yes.

XQ251. Because you had instructions to get evidence in this case? A. No, sir.

XQ252. You had instructions to select these letters, didn't you? A. I was asked to get anything that came to my knowledge.

XQ253. And to save them up, is that right? Yes or no? A. 806
Yes.

XQ254. How long since you have known anything about the firm of A. A. Waterman & Co.? A. I don't remember when I first heard of it.

XQ255. About how many years ago? A. That I don't know.

XQ256. It was a great many years ago, was it not? A. I would not say a great many.

XQ257. Ever since you have been in the business? A. No.

XQ258. Very nearly since you have been in the business? A. I don't think so.

XQ259. Ten years at least? A. It might go back that far.

XQ260. You have known them ever since they have been at 22 Thames Street? A. I have known of them.

XQ261. You knew it was a going concern? A. I didn't know 807
much about it at all.

XQ262. You talked of them with Mr. Frank D. Waterman, the president? A. No, sir.

XQ263. Never? A. I don't recall any instance.

XQ264. Do you know from any conversation with him whether he knew that there was such a firm as A. A. Waterman & Co.?

Mr. Watson: I object to that as being purely hearsay. Call him if you want to. The witness is instructed not to answer the question.

Mr. Bacon: We will take that to the Court. I will state on the record that Frank D. Waterman has sworn in a suit now pending in Italy that there was no such firm as A. A. Waterman & Co. doing business at 22 Thames Street, New York City, and I ask this witness if in conversation with Mr. Frank D. Waterman he referred to the existence of the firm of A. A. Waterman & Company.

XQ265. Do you refuse to answer?

Mr. Watson: Counsel for plaintiff moves to strike out the question and the remarks of counsel as entirely
809 improper; that if there is any such affidavit the affidavit is the best evidence, and the witness is instructed not to answer the question.

XQ266. Do you refuse to answer the question? A. I do.

Mr. Bacon: We will take it before the Court.

XQ267. Were not many of these letters received from dealers?

Mr. Watson: I object to that as the letters speak for themselves and are the best evidence.

XQ268. You may answer? A. The letters speak for themselves.
810 XQ269. You may answer. The letters do not indicate whether they are dealers? A. Then I am unable to tell.

XQ270. Then you don't know? You don't know the writer of a single one of these letters, do you; you never saw them? A. No.

XQ271. You don't know whether his signature is genuine or not? A. The only evidence is the letter.

XQ272. What is the imprint on Exhibits 7 and 8? A. The imprint on Exhibit 7 is Waterman's Ideal Fountain Pen, New York.

XQ273. Is that known by a number? A. The mark is not known by a number, no.

XQ274. Is that pen known by a number? A. Yes.

XQ275. What number? A. No. 12.

XQ276. In which the "2" of the "12" means the kind of pen point and the 1 the holders? A. It means the size of the pen point.

XQ277. Then the "2" of the 12 means the size of the pen point? A. The size of the pen point.

XQ278. And No. 1 the size of the holder; is that right? A. No, sir.

XQ279. What does the "1" of the "12" mean? A. It does not mean anything by itself.

XQ280. And what does the No. 12 mean? A. No. 12 indicates that particular style complete. 812

XQ281. Of both the pen point and pen? A. Yes.

XQ282. How much is it retailed at? A. $2.50.

XQ283. How much does it wholesale for?

Mr. Watson: Objected to as entirely immaterial to any issue in this case and the witness is instructed not to answer.

XQ284. Do you refuse to answer? A. Yes.

Mr. Bacon: The question is referred to the Court.

XQ285. Is it not a fact that the wholesale prices are 40 per cent off from the retail prices? 813

Mr. Watson: Same objection and the same instruction.

XQ286. What other numbered styles do you sell? A. We sell a large quantity of different numbers.

XQ287. 12, 13, 14, 15, 16, 17 and 18? A. Yes.

XQ288. No. 13 sells at $3.50 retail? A. Yes.

XQ289. No. 14 at $4? A. Yes.

XQ290. No. 15 at $5? A. Yes.

XQ291. No. 16 at $6? A. Yes.

XQ292. No. 17 at $7? A. Yes.

XQ293. No. 18 at $8? A. Yes.

XQ294. All of them with plain holders? A. Yes.

XQ295. How would these different styles from 12 to 18 inclusive be imprinted? A. They would be imprinted the same as a No. 12 would be.

XQ296. All have the same imprint? A. Yes.

XQ297. Are they all marked Waterman's Ideal? A. Not all of our pens.

XQ298. All of these numbers that I have spoken of? A. Not necessarily.

XQ299. Then the number does not refer to the imprint? A. No.

815 XQ300. No. 8—what number is that? A. This is a No. 13.

XQ301. How much does that retail for? A. It retails for $3.50.

XQ302. Do you know who this I. Waterman was, against whom you got an injunction? A. I never met him.

XQ303. Don't you know that his name was not Waterman at all? A. No.

XQ304. Don't you know that he sold a brass pen for about 25 cents? A. I don't know what his selling prices were.

XQ305. Then you don't know anything about him? A. Not personally.

XQ306. Who has told you anything about him? A. I met his wife, Rose Waterman.

816 XQ307. You never met him? A. No.

XQ308. How did you come to meet Rose? A. Her testimony was taken and she testified that her husband, I. Waterman, made those pens.

Q309. And that her husband was I. Waterman? A. Yes.

XQ310. Where did they live—in New York? A. I don't recall the address.

XQ311. You never have dealt in A. A. Waterman & Co. pens at all? A. No.

XQ312. You never have been connected with any store where they sold them? A. No.

XQ313. And you do not have any knowledge of what people ask for when they come into a store and want A. A. Waterman & Co. pens? A. No.

XQ314. You don't know whether they ask for Waterman pens or not? A. No.

XQ315. Your knowledge is confined exclusively to customers who come into the L. E. Waterman Company's store and want an L. E. Waterman Company pen, is that right? A. I have had these instances cited, where I met the people themselves, who testified that there was confusion in the name.

XQ316. How many have you ever met personally and testified to today? A. All that I have met I have not testified to. 818
I do not recall all of the cases.

XQ317. The only two cases that you can recall by name are Shay and the representative of Bingham & Co., is that right? A. Mr. Thomson.

XQ318. Who was he? A. He was the third party that I referred to.

XQ319. Did he tell who he bought the pen of? A. No.

XQ320. Then those three cases are the only names that you recall? A. Yes.

XQ321. In you fifteen years of experience? A. The only three that I have made a memorandum of.

XQ322. You take in A. A. Waterman pens in exchange for your own? A. Yes.

XQ232. What do you do with them when you repair them— 819
sell them again? A. No.

XQ324. What do you do with them? A. Throw them away.

XQ325. And you only take them in so as to induce a new sale of L. E. Waterman Company pens, is that right? A. Whenever the party wishes to exchange we do.

XQ326. How much do you allow on a self-filler A. A. Waterman? A. I could not say.

XQ327. You do not know anything about those prices?

Mr. Watson: Objected to as entirely immaterial to any issue in this case.

820 *William Hill Kernan*

XQ328. This letter from Brentano's asking for 5,000 circulars what has that got to do with this case, do you know? A. May I see the letter (referring to the letter). They are asking us for some circulars for Waterman Ideal Fountain Pens and it shows the confusion because they address the letter to A. A. Waterman.

XQ329. Don't that show merely carelessness? A. I don't know that it does.

XQ330. You never have had any personal communication with anybody connected with the A. A. Waterman Company or the Modern Pen Company, have you? A. No, sir.

821 XQ331. Then everything that you have testified to today relates to what other people have told you or what other people have written you; is that right? A. Not everything.

XQ332. Substantially everything? A. A large number of the cases.

XQ333. How many pens on an average do the L. E. Waterman Company sell per day or week? A. I could not say.

XQ334. You have no idea at all? A. No, sir.

XQ335. What proportion of those that they sell are marked Waterman or Waterman's without any qualifying words or initials?

Objected to as entirely immaterial to any issue in this case.

822 A. I don't know what proportion.

XQ336. You have not any idea at all? A. No, sir.

XQ337. Is it not a fact that there are very few that are manufactured that are printed in that way? A. I don't know anything about the quantity manufactured.

XQ338. You don't know how many are imprinted simply Waterman or Waterman's? A. No, they are mixed in with the regular stock.

XQ339. How long since you have seen one so imprinted? A. I have handled them right along.

XQ340. Did you see one yesterday? A. Not particularly, No.

XQ341. Did you the day before? A. I did not look for it.

XQ342. Or the day before that? A. I did not look for it.

XQ343. Can you say that you have seen one in a week? A. Yes.

XQ344. When did you see one and where did you see it? A. I handled it right in the wholesale department.

XQ345. Have you sold any so imprinted within a week? A. Yes.

XQ346. To whom? A. I could not tell you.

XQ347. How many? A. I could not tell you.

XQ348. Have you sold as much as a dozen within a week? 824
A. It might be a dozen and it might be two dozen.

XQ349. You simply don't know? A. No, sir.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ350. A large proportion of the silver and gold mounted pens are marked Waterman alone? A. Yes.

RDQ351. And some of them are Waterman without any other initial or distinguishing name? A. Yes.

RDQ352. Do you exchange any fountain pen that is brought in the store for your goods? A. Yes.

RDQ353. And you allow the same percentage on prices for A. A. Waterman pens, or those pens imprinted A. A. Waterman & Co., that you do for other makes? A. Yes. 825

RDQ354. No discrimination against pens stamped A. A. Waterman & Co.? A. None whatever.

RDQ355. Do you know of any complaint about the pens imprinted A. A. Waterman & Co. as to not being satisfactory? A. All the pens of that manufacture that come into our place are returned for that reason.

RDQ356. What do you find to be the objections made to the pens? A. They do not work well; they do not write.

RDQ357. Do you find anything the matter with the joint? A. Yes, we have a leaky joint.

826 *William Hill Kernan*

RDQ358. Did you ever know any person to come in and ask for a Waterman pen or a Waterman fountain pen and give you to understand that he expected or wanted a pen imprinted A. A. Waterman & Co.? A. No.

RDQ359. At any time, anywhere? A. No.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ360. You also have complaints of L. E. Waterman Company pens, leaky joints and the like, don't you? A. A few.

827 RXQ361. How many pens come in for repair every day on an average? A. I could not say.

RXQ362. They do not come to you at all, do they? A. They come through my department.

RXQ363. All of them? A. All the pens that come in by mail.

RXQ364. Do they come in by hundreds or by thousands a day? A. There would not be as many as a thousand.

RXQ365. There would be hundreds every day, wouldn't there? A. Well, how many hundreds?

RXQ366. I am asking you? A. There might be 200.

RXQ367. 200 a day for repairs? A. Yes.

RXQ368. How many of those would be A. A. Waterman & Co. pens? A. That I could not say exactly; a large num-
828 ber.

RXQ369. Can you say anything like how many? A. No, I never kept count of them.

RXQ370. Very few in number, are they not? A. We get more of the A. A. Waterman & Company repairs than we do of other miscellaneous manufacturers.

RXQ371. Out of 200 pens coming in for repairs every day about how many would be A. A. Waterman & Co.?

Mr. Watson: I object to the question. The witness has already answered.

RXQ372. Answer the best you can?

Mr. Watson: The same objection. The Court's attention is also called to the answer of the witness to this very question just above.

RXQ373. You may answer? A. I could not give you a definite amount.

RXQ374. Can you give me an indefinite amount, an approximate amount? A. It varies. Some days there may be a lot and some days there would not be so many.

RXQ375. What do you mean by a lot and what do you mean by not so many? A. There might be five or ten one day and their might be twenty the next day.

RXQ376. Will you average five or ten a day? A. I think 830
so.

RXQ377. And these complaints contained in these letters are the only ones where there was an apparent misapprehension as to the name of the pen? A. No, sir, there were numerous others.

RXQ378. Why didn't you bring the others? A. If I looked through our files to get all the others I would never do anything else.

Signature waived.

Adjourned to Monday, April 10, 1911, at 10 A. M.

831

832 *Edward M. Stephens*

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.
} In Equity.

833 New York, March 30, 1911.

Testimony taken on behalf of the complainant at final hearing before Frederick M. Adams, an Examiner of this Court, at the office of Watson & Raymond, 10 Wall Street, New York, the 30th day of March, 1911, at 2:30 o'clock in the afternoon, pursuant to notice hereto annexed.

Met pursuant to agreement.

Appearances:

W. B. Raymond, for Complainant.
Alexander S. Bacon, for Defendant.

834 EDWARD M. STEPHENS, a witness called on behalf of the complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Raymond:

Q1. Please state your name, place of residence and occupation? A. Edward M. Stephens, with Loring, Short & Harmon, Portland, Maine; salesman.

Q2. Where is the place of business of your concern? A. Portland, Maine.

Q3. What street address? A. 474 Congress Street.

Q4. How long have you been in the stationery business? A. Between 13 and 14 years.

Q5. How long have you handled and sold fountain pens? A. About ten years.

Q6. During that period have you been familiar with the fountain pens which are on the market? A. I have.

Q7. How did you get your familiarity with the fountain pens on the market? A. Selling them, buying them and handling them generally.

Q8. Do you buy fountain pens for your concern? A. Yes.

Q9. During that period what makes of fountain pens have you handled and sold? A. Waterman, Sterling, Moore, Crocker, and two or three other of our own which we imprint.

Q10. What do you mean by imprint? A. I mean pens got out 836
under our own name, our own private brand. Those are mostly bought of the Sterling Company and Davidson Rubber Company, successors to them today.

Q11. How long have you sold the Waterman Ideal Fountain Pen? A. About ten years.

Q12. Are you still selling them? A. Yes.

Q13. Do you come in personal contact, in the sale of these pens? A. Yes, I do.

Q14. By what name is the Waterman Ideal Fountain Pen, from your personal experience, asked for by customers? A. Waterman.

Q15. How long has that been the case? A. Ever since I have had anything to do with them.

Q16. In your experience with the Waterman's Ideal Fountain 837
Pen have you found them satisfactory to your customers? A. I certainly have.

CROSS-EXAMINATION by Mr. Bacon:

XQ17. What is the name of your firm? A. Loring, Short & Harmon.

XQ18. What pens are you now dealing in? A. The Waterman, Moore and Sterling.

XQ19. Do you find them all satisfactory? A. Yes.

XQ20. Just as satisfactory as the Waterman? A. No, I cannot say entirely so.

XQ21. You never have dealt in the A. A. Waterman pens at all? A. We had some A. A. Waterman pens I should judge about ten or twelve years ago, when I first came there.

XQ22. They were well known in that vicinity at that time? A. No, I cannot say that because the Waterman Ideal Pen is known better than the A. A. Waterman and always has been.

XQ23. But the A. A. Waterman was known at that time? A. Yes.

XQ24. And people called it the Waterman pen too, didn't
839 they? A. Yes.

XQ25. And it was sold openly and above board in the market? A. Yes.

XQ26. Anybody could buy them? A. Yes.

XQ27. No question about that? A. No.

XQ28. They were then manufactured in Boston, were they not? A. I couldn't say about that for sure. I did not buy them at that time.

XQ29. As far as you know they were satisfactory even ten or twelve years ago? A. I could not say on that score. I think they were, as the general run of pens go.

XQ30. And today if a man carried an A. A. Waterman pen he would probably call it a Waterman, wouldn't he? A. Yes, he would.

840 XQ31. And if he wanted to get another pen and went to an A. A. Waterman store he would probably call for a Waterman? A. Yes.

XQ32. Are A. A. Waterman pens sold in Portland? A. I don't think so today. I don't know of any concern that carries them. I may be wrong on that score. I am not positive about that.

XQ33. Has the L. E. Waterman Company ever made any imprints for you? A. They never have, no, sir.

XQ34. When dealers carry both the A. A. Waterman and the L. E. Waterman do they generally call them both Waterman? A. I don't know. I think they would call an A. A. a Waterman

Ideal. I have not handled those for so many years, running the two lines, I could not be positive. We have not had them for a great many years. There were some there when I first came there.

XQ35. How did you designate them when you did know them years ago? A. I cannot say about that sure. There was a pen we used to handle, made by the A. A. Waterman, called the Modern. If I remember right, it was called Modern at that time and I think if a man came in and asked for a Waterman pen we would show him a Waterman and if he wanted a Modern we would show him a Modern.

XQ36. Didn't you call the Modern pen a Waterman too? A. 842
I don't think they were sold that way. I think they were sold as Modern fountain pens if I remember right.

XQ37. They were all imprinted A. A. Waterman & Co., Boston, were they not? A. I imagine so. I could not swear to that because it has been so long ago.

RE-DIRECT EXAMINATION by Mr. Raymond:

RDQ38. Did you ever have a customer come into your store and ask for a Waterman pen who indicated in any way that he expected to receive an A. A. Waterman pen? A. No, I never have.

RDQ39. Did you ever have any customer come into your store 843
and call for an A. A. Waterman pen or say they were carrying a Waterman pen believing that they had the Waterman Ideal Fountain Pen? A. I have had customers come in with an A. A. Waterman pen that somebody else had sold them, believing that they were getting a Waterman Ideal. They had the impression that they had a Waterman Ideal when they had an A. A.

RDQ40. Did you ever know a person carrying an A. A. Waterman pen and calling it a Waterman pen who knew that he was carrying an A. A. Waterman pen and not a Waterman Ideal Fountain Pen? A. Yes.

RDQ41. Were these A. A. Waterman & Co. pens generally satisfactory to the customers? A. That is rather a broad question.

844 *Edward M. Stephens*

RDQ42. Did you have much trouble with the A. A. Waterman & Co. pens? A. More or less; that is, pens that are brought in for repairs, I find that the A. A. Waterman pen and the self-filler pen, they have a screw arrangement on the end to fill it, to twist. I have had a good many of those pens that customers have brought in where they could not get them open, on account of the fact that there was no chance to get a purchase on the pen to twist the rubber sack. I have run across one or two of the A. A. Waterman pens that I have not had trouble with, that is, taking the gold pens in and out; we often have to take them and clean them and the gold pens will never go back in
845 place. I should always send them to the factory. It is about the only make of pen that I remember that I do that. We usually have to send them to the factory and have the gold pen put in again, when we take them out for cleaning purposes.

RDQ43. Have you ever had an A. A. Waterman pen brought in to you that the person bringing it in to you said it was entirely satisfactory? A. I could not say that case has occurred although it may have. I should not at all be surprised. We get that in every pen more or less. I don't recall any one instance of that but it may have occurred of course.

RDQ44. Have you ever known of any cases where A. A. Waterman & Co. pens were called Waterman pens where the people knew that they were A. A. Waterman & Co. pens, and
846 that that concern had no connection with the L. E. Waterman Company? A. I think as a rule people have the two concerns confused; they think that the A. A. Waterman pen and the L. E. Waterman pen are the same company; that is, a man has an idea when he buys an A. A. that it is an L. E., in a great many cases.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ45. How do you know that? A. Very often we have customers come in who will bring an A. A. Waterman pen that they have bought from some dealer and they want to exchange it from our stock. We advertise as being agents of the Water-

man Ideal Pen and they will often bring a pen in and want to exchange it and then they find it is an entirely different manufacture.

RXQ46. Can you give the names of any of those? A. No, I could not.

RXQ47. Can you give the name of any person who ever had an A. A. Waterman pen and thought it was an Ideal? A. No, I don't think I could.

RXQ48. Did you ever notice that the middle joint of the A. A. Waterman pen was apt to leak, among those that they brought in for repair? A. No, not any more than any other pen would. If you got ink in the thread it would not leak any more than 848
any pen. That is apt to happen in any manufacture, if you get ink in the thread.

RXQ49. Do you repair all sorts of pens? A. Yes.

RXQ50. You carry sacks to repair the A. A. Waterman pens? A. No, we do not.

RXQ51. Don't you know that for the last five or six years, since the organization of the Modern Pen Company, the button on the end of the pen has been made very much larger than it was in years past and that there has never been any trouble during that time? A. I never noticed that they had increased the size of it but they may have.

RXQ52. You very rarely get in an A. A. Waterman pen for repairs? A. A very small percentage of them are A. A. Water- 849
man pens.

RXQ53. They are not sold very much in Portland? A. No, not today. There was one concern used to carry them a number of years ago but they have gone out of business and since then as far as I know there has been no regular agent there.

RXQ54. And the only way to run across an A. A. Waterman pen is when it comes in for repairs at Portland? A. Yes.

RXQ55. And you are not very often in Portland? A. Yes. I am here perhaps as a rule once or twice a year. This year I am here twice, but as a rule I spend a week in New York and two weeks on vacation.

850 RXQ56. Then you are not a traveling salesman? A. No, I am right inside of the store. I have entire charge of the office supply department.

Deposition closed.

Signature waived.

Adjourned to Monday, April 10, 1911, at 10 o'clock A. M.

UNITED STATES CIRCUIT COURT,

851

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY, Plaintiff, vs. MODERN PEN COMPANY, Defendant.	In Equity.

New York, January 13, 1911.

Met pursuant to adjournment.

852 Appearances:

Samuel S. Watson, for Plaintiff.
Alexander S. Bacon, for Defendant.

Mr. Watson: Counsel for plaintiff asks counsel for defendant to admit that the advertisement of Wolfson Bros. of Jersey City, now shown defendant's counsel, appeared in the Jersey Journal, Saturday evening, December 11, 1909

Mr. Bacon: I do.

Mr. Watson: Counsel for plaintiff offers the advertisement in evidence and asks that it be marked Plaintiff's Exhibit 11. 853

Mr. Bacon: Objected to as incompetent, irrelevant and immaterial, and in no way connected with the defendant.

Marked Plaintiff's Exhibit 11, January 13, 1911, F. M. A., Exr.

It is consented that the cuts in the printed book be marked exhibits in this case.

Mr. Watson: Counsel for plaintiff asks counsel for defendant if he will admit that the defendant paid one-half of the cost of inserting the advertisement, Exhibit 11, in two newspapers published in Jersey City on Saturday evening, December 11, 1909. 854

Mr. Bacon: The answer is no.

Mr. Watson: Counsel for plaintiff asks counsel for defendant if he will admit that the defendant wrote certain letters to Wolfson Bros., copies of which are now exhibited to defendant's counsel, said letters being dated December 16, 1909 and December 18, 1909.

Mr. Bacon: I am willing that these letters shall go in provided the whole correspondence be put in the record as set forth in the printed record in this case as Exhibits II, JJ, KK, LL and MM, on pages 441 to 444 of the record on the motion for preliminary injunction in the United States Circuit Court of Appeals.

Mr. Watson: Am I to understand from counsel that he admits that these letters shown in this correspondence were written by the parties whose names are appended to them? 855

Mr. Bacon: Yes, that the correspondence passed as indicated in the letters themselves. It is understood that this entire correspondence is in; is that so?

Mr. Watson: Counsel offers in evidence the letters Exhibits JJ and LL, dated December 16, 1909, and December 18, 1909, addressed to Wolfson, Bros., Jersey City, signed by the Modern Pen Company by Hobart W. Geyer, Assistant Treasurer and asks that they be marked Plaintiff's Exhibit No. 12.

856 *Richard H. Waldo*

The letters referred to are marked in the printed book: Plaintiff's Exhibit 12, January 13, 1911, F. M. A., Exr.

Mr. Bacon: I offer in evidence the letters of December 14, 1909, from Wolfson Bros. to A. A. Waterman & Co.; December 17, 1909, from Wolfson Bros. to Modern Pen Company, and December 20, 1909, from Wolfson Bros. to Modern Pen Company, it being understood that in the printed record these letters shall be printed in chronological order.

Mr. Watson: Counsel for plaintiff now asks counsel for defendant if he will admit that the defendant paid
857 for one-half of the cost of the advertisement of Wolfson Bros. appearing as Plaintiff's Exhibit 11.

Mr. Bacon: No, I do not admit it. I want to look at the bill before I say what we will do.

RICHARD H. WALDO, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, place of business and residence? A. Richard H. Waldo; residence 3609 Broadway, New York City; advertising manager of the Good Housekeeping Magazine.

Q2. Where is your office? A. 439 Lafayette Street, New York City.

858 Q3. Were you connected with Good Housekeeping in the same capacity during the year 1909? A. Yes.

Q4. I show you a copy of the magazine Good Housekeeping of September 19, 1909, and ask you if that is a copy of the magazine which was printed and distributed at that time (handing witness a magazine)? A. Yes.

Q5. Is that a magazine of general circulation? A. Yes, 250,000 copies at that time.

Mr. Watson: The magazine is offered in evidence, and the Examiner is asked to mark it Plaintiff's Exhibit No. 13.

Mr. Bacon: Objected to as incompetent, irrelevant and immaterial, as self-serving and containing an advertisement of the plaintiff itself.

Marked Plaintiff's Exhibit 13, Jan. 13, 1911, F. M. A., Exr.

Q6. This magazine contained an advertisement of the L. E. Waterman Company of its fountain pens, did it not? A. Yes.

Q7. The magazine also contained a puzzle problem or contest, did it not? A. Yes, it has for eight years.

Q8. That is a regular part of the magazine? A. For the last eight years every issue has carried it, with one exception.

Q9. Did the Waterman Company pay anything in addition 860
to the regular advertising rates for the appearance of this puzzle problem? A. No, sir.

Q10. Did any of the other advertisers in the magazine pay anything for their interest in this particular puzzle? A. No, sir; none of them had any knowledge of it; they had no knowledge of it until some time after it appeared, after it was actually printed and distributed.

Q11. Did the Waterman Company at any time pay any part of the cost of this puzzle problem except the regular advertising rates for its advertisement? A. No, sir; in no way whatever.

Q12. Did you receive any replies which referred to the Waterman Ideal Fountain Pen in connection with this puzzle? A. A considerable number. 861

Q13. What became of those replies; have you got them now? A. We transcribed a certain number of them; the clerk acting under usual instructions to pick out those replies which would be of real interest to the advertiser.

Q14. That applied to every person referred to in this puzzle, did it not? A. Every letter which comes in usually contains mention of one or more names of advertisers included in the puzzle. This clerk's duty has been for the last eight years, to select from these letters the points of interest to the various advertisers and transcribe them on the typewriter for transmission in due course as matter of general interest.

862 *Richard H. Waldo*

Q15. And the clerk who made the extracts from these letters received in reply to the September puzzle relating to Waterman's Ideal Fountain Pen, worked under your direct supervision? A. Under my order.

Q16. What became of the replies after this summary was made? A. They are destroyed each month as soon as the transcript is taken. The volume is too large to admit of their preservation.

Q17. In the case of the replies to the September issue of the puzzle, as matter of fact these replies were destroyed before the Waterman Company communicated with you in reference to
863 them at all? A. They are always destroyed within two or three days—within ten days; they sometimes keep them that long—within ten days of the transcription.

Q18. Will you produce a copy of the extracts which were made from the replies which you received from the September puzzle which related to Waterman's Ideal Fountain Pen?

(The witness produces a paper.)

Mr. Watson: The extracts produced by the witness are offered in evidence, and the Examiner is asked to mark them Plaintiff's Exhibit No. 16.

Mr. Bacon: Objected to as incompetent, irrelevant and immaterial, secondary evidence and hearsay, and self-serving.

864 Marked Plaintiff's Exhibit No. 16, January 13, 1911, F. M. A., Examiner.

Q19. At my request have you made a computation of the different names which the writers of these letters to Good Housekeeping used in referring to Waterman's Ideal Fountain Pen? A. Yes. Such computation was made by my secretary and verified by me.

Q20. Have you it? A. I have it with me (producing a paper).

Mr. Watson: The computation produced by the witness is included in his answer.

Mr. Bacon: The same objection.

The computation referred to is as follows:

Waterman Pen	used	45	times
Waterman Ideal Fountain Pen	"	42	"
Waterman Fountain Pen	"	41	"
Waterman's Ideal Fountain Pen	"	23	"
Waterman's Ideal Pen	"	11	"
Ideal Fountain Pen	"	9	"
Waterman's Pen	"	10	"
Waterman	"	8	"
Waterman's	"	7	"
Waterman's Fountain Pen	"	6	"
L. E. Waterman Fountain Pen	"	2	"
L. E. Waterman Pen	"	1	"
L. E. Waterman Co. Fountain Pen	"	1	"
Ideal Pen	"	3	"

866

Q21. What is known in your line of business as Waterman's Pens, or Waterman's Fountain Pens; what is known, if you know, when these terms are used? A. A certain pen which I can best describe as identical with one which was presented me by my office workers at Christmas time, that I have with me (producing a pen).

Q22. How is that pen marked? A. "Waterman Ideal Fountain Pen." 867

Q23. Do you know who the manufacturers of those pens are? A. No, sir; I do not.

Q24. Who sells those goods, that you know of? A. A concern at the corner of Broadway and Cortlandt Street, that is the headquarters, answering the question purely from impression.

Q25. Is it generally known in your line of trade that the Waterman pens are made and sold by the Waterman Company, whose office is at 173 Broadway, New York? A. That is my impression.

868 *Richard H. Waldo*

Q26. And in your line of trade, by what name is the L. E. Waterman Company commonly referred to? A. Waterman.

Q27. How long have you been familiar with the Waterman Company and its fountain pens? A. Ten years.

CROSS-EXAMINATION by Mr. Bacon:

XQ28. This puzzle feature of your magazine has been in every issue of the magazine but one for eight years, has it? A. Yes.

XQ29. Each month you select six advertisers? A. From six to twelve.

869 XQ30. And put a part of the advertisement into the puzzle? A. Yes.

XQ31. So that anybody by reading the puzzle will read a part of the advertisement? A. No, sir.

XQ32. Where, in this exhibit or puzzle picture is the L. E. Waterman Company referred to? (The witness indicates.)

XQ33. It is the printing on the top of the boy's cap? A. Yes.

XQ34. And that is part of the printing of their advertisement in that particular issue? A. It is a selection, yes.

XQ35. How often has the Waterman advertisement appeared in the picture puzzle? A. But once. We average each advertiser about once in three or four years.

XQ36. And how long have they been advertising with you? A. They are on their fourth year now.

870 XQ37. And it never has appeared but that once? A. No, sir. They are about due again.

XQ38. Did you solicit their advertisement? A. No.

XQ39. It was done under your management? A. Yes.

XQ40. Is it not a fact that when you solicit advertisements you tell the people about this puzzle feature which attracts attention to the advertisement? A. The absolute instructions to all solicitors are that the puzzle page shall not be mentioned in any way, shape or manner in connection with securing advertisements.

XQ41. You don't know whether they obey those instructions or not?

Mr. Watson: Objected to as absolutely immaterial.

A. Except that I would discharge the man who disregarded them.

XQ42. Any man who can read a picture can tell that that is a feature of your magazine? A. It is a well known feature of the magazine.

XQ43. And every advertiser knows that he will have his chance within about three years? A. No, sir; there are many whom we do not include at all.

XQ44. Are there any who have been advertising three years or more with you who have not been included in the puzzle picture? A. Absolutely. 872

XQ45. How do you make these selections? A. The usual way is to have an equal number included in the puzzle from each territory; the central territory, New England territory and the Western territory. That is absolutely in the hands of the puzzle editor in Springfield, and until after the selection has been made the advertising department does not know who is to be included.

XQ46. The advertisers know this habit? A. Through long custom.

XQ47. And the L. E. Waterman Company knew it? A. I have no reason to believe that it ever has been brought to their attention.

XQ48. You do not know that it was not brought to their attention? A. I have every reason to believe that it was not. It would be an exceptional thing if it had been, unless by their own advertising agents, which is a matter beyond my knowledge. 873

XQ49. Was there any reward for guessing these right? A. Yes.

XQ50. What was it? A. A $5 prize and certain other prizes, to be paid by the selection of goods to the value of $2 and by the offer of certain books of fiction.

XQ51. That is, anybody who would write in these letters was seeking this reward? A. That was their intent.

XQ52. Then these letters, copies of which you have today submitted, were not the voluntary act of the writer, but they

were seeking a reward by writing what they did? A. No, sir; it is expressly stipulated in the explanation that no mention of any experience is required, but if they see fit to put it in we shall be glad to have it.

XQ53. They are requested, are they not, to praise the article that they select? A. No, sir.

XQ54. Is not this contained in the magazine: "While it is in no way a part of the condition of this puzzle, yet if you have had any experience with the article or articles mentioned we would be pleased to have you state it. The prizes are, however, not contingent upon such information?" A. That is correct.

875 An unfavorable experience is as welcome as favorable.

XQ55. Are you apt to get unfavorable comments from those who are seeking a reward for a correct solution of the puzzle? A. A small proportion only send unfavorable criticisms.

XQ56. What percentage? A. Five per cent.

XQ57. Then is it a fact that every person who wrote a letter in relation to the plaintiff's pen and advertisement in the issue of your magazine expected or hoped to get a prize? A. Every person who answered the puzzle expected to get a prize, and whether they selected the pen or some other of the six mentioned was a matter of option with them purely.

XQ58. They could select one or more? A. One or more; usually more.

876 XQ59. And the more they selected the more apt they were to get a prize? A. Quite the reverse.

XQ60. On what did the prize depend? A. The award of prizes has been based on the neatness, clearness and general attractiveness of the answer. The great majority of the answers sent in are correct, so that it comes down to a point for selection as in many cases the answer is hand-painted or illumined in some very attractive way, and the award goes on that basis.

XQ61. If it happens to be in poetry they are more apt to get an award? A. Poetry is sometimes favorably considered.

XQ62. Just now you had to take the pen from your pocket to find out what the name of it was, did you not? A. No, I took it out to find out what the name on it was.

XQ63. Will you read what is on that pen? A. "Waterman Ideal Fountain Pen, New York. Pat. Feb. 12 and Nov. 12, 1884, U. S. A."

XQ64. When was that bought? A. It was presented to me this last Christmas. I believe it was purchased just before that

XQ65. 1910? A. Yes.

XQ66. Is "L. E. Waterman Company" on it anywhere? A. I do not see it.

XQ67. Have you ever become familiar with the A. A. Waterman Pen Company? A. No, sir; I have not.

XQ68. Then you do not know anything about that make of pen? A. No. 878

XQ69. You do not know whether that is called Waterman or not? A. No.

XQ70. You do not know by what term it is designated? A. I have no knowledge that there is such a pen.

XQ71. Do you mean to say you do not know who manufactured that pen in your pocket? A. I presume it was manufactured by the concern from whom it was purchased.

XQ72. Don't you know the name of that company? A. The Waterman Pen Company, yes.

XQ73. Don't you know it is the L. E. Waterman Company? A. I presume my office records would show that.

XQ74. Have you not been looking at the advertisement right before your face all the time you were testifying? A. No.

XQ75. Was not that pointed out to you by Mr. Watson a 879 little while ago? A. No, it was turned upside down.

XQ76. D you mean to say that when he showed you the part of this advertisement that was on the boy's cap in the puzzle, it was not right side up just as it is at this moment? A. It was sidewise to me, with my eye directed to the letters "Co." at the end of the name.

XQ77. Then you did not see the "L. E. Waterman" preceding the "Co."? A. Not at the moment. I see it clearly now that you have called my attention to it.

XQ78. In the month when this Waterman advertisement was a part of the puzzle picture you received replies in relation to all

880 *Richard H. Waldo*

the other advertisements in the picture, too, did you not? A. Yes.

XQ79. Just as many from the others as you did from Waterman? A. That would be difficult to tell. It varies tremendously. As, for instance, in the current issue we received 200 from one and 11 from another.

XQ80. It depends upon the plainness of the reference? A. No, it depends entirely on how well known the concern is to our readers. For instance, the Singer Manufacturing Company holds the high record for securing replies.

XQ81. It is not determined largely by the plainness with which
881 the advertisement is indicated in the puzzle picture? A. Quite the reverse. The obscure one is very apt, because it must be very diligently sought, to make the greater impression and so lead to the attention being directed to that particular advertisement, if the knowledge of that advertiser is in the mind of the reader.

XQ82. If a person would simply send in a letter stating that they had discovered the L. E. Waterman advertisement they would not get any prize? A. Oh, no.

XQ83. They had to put in some flourish or some praise of the advertiser? A. No, they have to send in Waterman with the other five all correct. Whether or not there is a commendation included is absolutely irrelevant.

XQ84. You send copies of these replies to all of the adver-
882 tisers? A. Not all the copies of the replies. Some of the copies of the replies, not all the copies of the replies. Some of the copies of the replies to all of the advertisers if there are a sufficient number to amount to anything.

XQ85. And if they are complimentary? A. The transcripts are not sent if they are uncomplimentary. If they are seriously uncomplimentary the matter is taken up in person by myself or the manager of one of the branch offices and if the feature about which complaint is made is not remedied the advertising is discontinued.

XQ86. You do not know whether there were any uncomplimentary notices among these Waterman replies, or not? A.

There is no record in my office, I find, on searching, and there would be ordinarily such a record in case that had been sent down to me.

XQ87. Sent down to you by whom? A. By the puzzle editor in Springfield, Mass.

XQ88. You only know what he sent; you do not know what he kept back? A. I always know what is kept back. If anything is kept back and not transcribed they are to be sent to me, with the reasons.

XQ89. You don't know whether they carry out those instructions or not? A. Simply to the best of my knowledge and belief.

Signature waived.

Adjourned subject to notice.

Plaintiff's Exhibit 16.

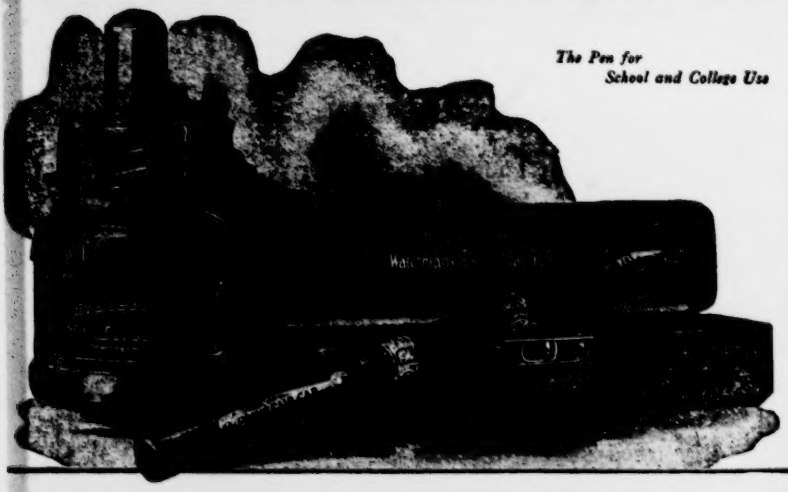
The magazine (Plaintiff's Exhibit 13) contained the following:

"On the preceding left-hand page appears our September puzzle. Within the illustration are six parts of advertisements taken from six announcements appearing in this issue. Look through all the advertisements carefully.

Make up your list, giving the names of the firms represented, together with the name of the product they manufacture.

While it is no way a part of the condition of this puzzle, yet if you have had any experience with the article or articles mentioned, we would be pleased to have you state it. The prizes are, however, not contingent upon such information."

A copy of the puzzle page and plaintiff's advertisement are annexed hereto.



The Pen for School and College Use

Quality and Simplicity

ARE THE STRONGEST CHARACTERISTICS OF

Waterman's Ideal Fountain Pen

Other methods of writing have outlived their usefulness. In keeping abreast of the times the users of this pen find the greatest satisfaction in its efficiency. Made in the largest and best equipped fountain pen plant in the world, from the best raw materials that money can buy. The uncommon existence of simplicity obtains not only accuracy but durability. This pen and ink provide the tried and successful materials for all writing purposes. Try it for comparison.

The styles are Standard (*illustrated*), Safety and Self-Filling. There are 366 patterns and sizes—34 varieties of pen points in each size—Prices $2.50 and upwards.

From the Best Dealers Everywhere

L. E. Waterman Co., 173 Broadway, N. Y.

8 School Street, Boston
734 Market Street, San Francisco
209 State Street, Chicago
136 St. James Street, Montreal
12 Golden Lane, London
6 Rue de Honovre, Paris

rel
music
dealer
latest
Farnum

886 *Plaintiff's Exhibit 16*

A large number of letters were receivd from the readers of said magazine, and the substantial parts thereof read as follows:

"I used a Waterman Ideal Fountain Pen during my entire high school course and intend taking it to college with me in the fall.

MISS C. CURTISS JOHNSON,
87 High St.,
Yonkers, N. Y.

Waterman's Ideal Fountain Pen can be bought from the 'Best Dealers' everywhere or from the firm.
887

MRS. CHAS. S. HARKINSON,
209 Garfield Ave.,
Aurora, Ill.

I am at present using a Waterman fountain pen and am never without it.

MISS C. H. BRADLEY,
Apartado 155,
Parrae, Chih.
Mexico.

I have used a Waterman Ideal Fountain Pen for about eight years and find it fulfills all that is claimed of it.
888

MRS. H. M. DODGE,
Rockville
Centre, L. I.

I have used a Waterman's Fountain Pen and have found it very satisfactory.

CHARLOTTE E. MORRILL,
24 Jacques Ave.,
Worcester, Mass.

Plaintiff's Exhibit 16 889

My husband, my college daughter and myself all use Waterman Fountain pens, which we find most satisfactory.

MRS. C. N. GEER,
West Hartford,
Conn.

Waterman fountain pens according to my opinion are the only fountain pens worth buying. I have never seen another kind that hasn't a number of faults, such as leaking or not running when you want them to. The Waterman seems to discover remedies for all fountain pen evils existing.

MAE E. FINN, 890
Evansville, Wis.

W hene'er I wish a word to write
A t evening, morn or dead of night
T o you I turn for timely aid
E xpecting I will find you laid
R ight at my hand, ready and waiting
M y work to do—unhesitating;
A nd in the daily stress and strain
N e'er have I called on you in vain,
S uch is the IDEAL FOUNTAIN PEN.

MISS ANNA F. COOTE,
Thompsonville, Conn.

891

When I graduated from business college, one of my gifts was a Waterman Ideal Fountain Pen, and since then, it has had the hardest kind of use, and has always given perfect satisfaction. I use it for both stenography and longhand.

LUCY WILLIAMS TAGGART,
903 French St., N. W.,
Washington. D. C.

892 *Plaintiff's Exhibit 16*

I never would use but a 'Waterman' fountain pen—they are always reliable and don't balk when most needed, as do most others.

MISS RIGINA NEUMAN,
4414 Michigan Ave.,
Chicago, Ill.

I have been using a Waterman Ideal Fountain Pen for several years and find it superior to a number of other makes that I have also used.

MRS. G. FRANK WITMEN,
893 40 Tremont St.,
York, Pa.

Should like to say a few words for Waterman's pen. I find it more satisfactory than any other I have used although I have had several. It is in good condition and attractive in appearance and I have used it for a year and more and constantly at that.

MARGARET NORTON,
75 Clayton St.,
Dorchester, Mass.

I have used a Waterman Ideal Fountain Pen for two years, and it has given perfect satisfaction.

894 MRS. PAUL H. LIPP,
323 12th St., S. W.,
Washington, D. C.

I have used a Fountain Pen
Ever since the Lord knows when,
And I've found, in every test,
Waterman's is by far the best.

HENRIETTA S. BOYD,
426 Waverly St.,
Palo Alto, Cal.

Plaintiff's Exhibit 16

895

I have one of the Waterman Fountain Pen and use it every day. I like it real well.

GERTRUDE FOHY,
P. O. Box 274,
Webster, N. Y.

The pen now in use, I have owned for seventeen years and it has daily work for the past ten years. It now seems in its prime and has never been in need of repairs. Such is Waterman's.

MRS. GEO. WUICHET,
R. F. D. No. 13,
Dayton, O.

896

I used a Waterman pen for many years in a publishing house and found it highly satisfactory, using it when I was addressing wrappers.

MRS. M. B. SCHNOYER,
West Hazelton, Pa.

I wish to say that my husband has used a Waterman pen for several years and finds none are equal to them in any way either in durability or simplicity.

MRS. NATHANIEL FROST,
1008 E. Grove St.,
Bloomington, Ill.

897

I have used Waterman's Fountain Pens and like them very much. I think they are far ahead of all others.

Isabell Ewell,
14 Vine St.,
Medford, Mass.

I have used Waterman's Fountain pens and the many good things said about them are not exaggerations. Whenever I go my pen goes too; it has spoiled me for all others.

MRS. CHRIS J. OLESON,
Deansboro, N. Y.

898 *Plaintiff's Exhibit 16*

Have used a Waterman's Ideal pen at home and at office for years. I feel that I could not do without one. They are the best ever.

MRS. LOUIS JACOBS,
Kinghee, S. C.

The L. E. Waterman pen I have used for a long time and think it the best pen on the market. If people would give it the same care and attention that they do the rest of their belongings, there would be no cause for complaint. I would not give it up for any pen I have ever used.

899 CLARISSA Z. DAWSON,
216 Main St.,
Little Rock, Ark.

I have had a great deal of experience with the Waterman Fountain Pen in fact am using it now and am never without one. It is the best made pen and the firm the most reliable. Each year a new pen of newer style is given in return for an old pen and nearly half cost for allowance is made for *old* pen if not broken—now what other firm would be as generous?

I have used these pens for fifteen years, and would feel lost without one.

MRS. FRED M. GILBERT,
900 239 New York Ave.,
Brooklyn, N. Y.

I am writing this with a Waterman Ideal Fountain Pen and I think it is far superior to any other.

MRS. E. L. HOUSTON,
Bozeman,
Montana.

It gives me great pleasure to recommend the Waterman pen. In my work as a nurse I find it invaluable. Always ready for

use, it is a faithful servant, and I should not want to part with mine.

MISS DORCAS A. BOYD,
81 Thorndike St.,
Brookline, Mass.

I have tried the Waterman Ideal Fountain Pen and found it convenient and fine in every way.

MRS. J. A. SEALE,
Thomasville, Ala.

I am using a Waterman Ideal Fountain Pen and think every man should have one in his pocket. 902

MRS. G. B. JACK,
2534 N. Senate Ave.,
Indianapolis, Ind.

I cannot too highly praise the Ideal Fountain Pens, one of which I have possessed for years and it still does perfect work.

MISS P. L. KILLAM,
Room 302, 56 Wall St.,
New York.

I have tried several kinds of fountain pens but Waterman's has proved the most satisfactory of them all.

MISS EDITH L. BARTLETT,
Raymond, N. H.

903

For a year I have used a Waterman pen and I consider it ideal. I have just bought a new one for a friend.

MRS. E. A. PARKS,
13 Draper Ave.,
Plattsburgh, N. Y.

I am writing this with a Waterman Ideal Fountain Pen and consider it the best. Our family all use them and are perfectly satisfied.

MISS ADELIA KELLEY,
903 Michigan Ave., West,
Lansing, Mich.

904 *Plaintiff's Exhibit 16*

I always carry a Waterman Fountain pen in my bag and could not get along without it. I think there is none better.

BLANCHE WALLACE,
539 So. 26 Ave.,
Omaha, Nebr.

The Waterman Ideal Fountain Pen is the only ideal fountain pen. Have had two other makes but find none as good as Waterman's.

MISS SYBILLA SHARER,
354 E. Union St.,
Bethleham, Pa.

905

I would like to state that my brother and I have used Waterman's Fountain Pens for three years in all our school work and find nothing better.

RUTH E. POLLOCK,
275 Clinton Ave.,
Brooklyn, N. Y.

I have used a Waterman Fountain Pen daily for the past three years. I can recommend it very highly.

MRS. C. E. KILBY,
129 1st Place,
Brooklyn, N. Y.

906

I have used the Waterman pen for a period of four years and with perfect satisfaction.

MRS. WALTER I. NICHOLS,
267 Cherry St.,
Fall River, Mass.

I have constantly used the Waterman fountain pen and find it to be the best of all the makes I have tried.

BEATRICE TROMMER,
109 West 113 St.,
New York City.

Plaintiff's Exhibit 16

907

I have used a Waterman pen with best results. They never refuse to write if supplied with ink.

J. J. BARRINGER,
Schenectady, N. Y.

I am now writing with a Waterman Ideal Fountain Pen and sincerely would dislike to be compelled to do without it for they are all that is claimed for them and more.

MRS. ALICE M. KASE,
36 Demarest Ave.,
Englewood, N. J.

908

I have used a Waterman Fountain pen and have been very much pleased with it.

MISS ANNA T. KELLEY,
11 Vernon St.,
Worcester, Mass.

I have had a Waterman's pen in the house for years and find it is all its advertised.

MARTHA R. FISSEL,
New Carlisle, Ohio.

I have a Waterman Fountain pen constantly for three years and would not use any other in its place.

909

MRS F. F. WELLS,
529 Monroe St.,
Brooklyn, N. Y.

I consider the Waterman Ideal Fountain Pen the best ever made.

AMANDA LANGDON,
202 West 148th St.,
New York.

910 *Plaintiff's Exhibit 16*

I have used Waterman's Ideal Fountain Pen while a student at the University of Georgia and have found that they are the most satisfactory obtainable.

WILLIAM E. FORT,
Mt. Airy, Ga.

I can speak from long experience of the excellence of the Waterman Fountain Pen. I have used other makes when away from home but am always glad to get my own into my hand again. I have used the same pen for seven or eight years.

FANNY G. SMITH,
15 77 Riverdale St.,
911 Chicopee, Mass.

I have used the same Waterman pen for six years which is a good recommend in regard to its lasting qualities.

MRS. RODERICK FITCH,
Walton, N. Y.

Waterman Fountain pen—the *only* fountain pen in the market.

MRS GUY VAUGHN,
11 Echo Ave.,
New Rochelle, N. Y.

I know the value of the "Fountain Pen" for convenience, and
912 that the "Waterman" is alright.

ROBERT K. SQUIER,
Monson, Mass.

I have had the most satisfactory results from the Waterman Fountain Pen. Every member in our household has found it necessary to use one.

(MISS) VERA McMINN,
622 Ave. K.,
Flatbush, B'klyn.

Plaintiff's Exhibit 16

913

I have used the Waterman Ideal Fountain Pen and can say it is all it is represented to be.

(MISS) MAMIE STEWART,
Rockton, S. C.

I have had business connection with the L. E. Waterman Co. This letter is written with an Ideal Fountain Pen. I have used the pen for five years and there is no other make on the market like it.

MRS. A. L. BUTLER,
590-66th St.,
Oakland, Cal.

914

Have used a Waterman Fountain Pen for several years and am well pleased with it.

MRS. J. R. HEAD,
Gibsland, La.

My husband uses Waterman's Ideal Fountain Pen, has two of them and prizes them very highly.

MRS. CHAS. F. POLAK,
824-9th Ave.,
Nashville, Tenn.

I have also a Waterman Fountain Pen and can not get along without one, they are the greatest convenience of the age, and especially useful for travelers. 915

MISS JESSIE FRY,
424 Deer St.,
Dundkirk, N. Y.

I have used a Waterman Ideal Fountain pen for a number of years and feel now I could not get along without one.

ELIZABETH J. BALDWIN,
34 Dana St.,
Cambridge, Mass.

916 *Plaintiff's Exhibit 16*

L. E. Waterman Co. whose make of Fountain Pen is ideal for school use.

CHARLOTTE FRANCIS HARRIS,
571 First Ave.,
West Haven, Conn.

I write with the Waterman Ideal Fountain Pen altogether and would not exchange it for any other.

MRS. R. A. COLLINS,
Meridian, Miss. P. O. 422.

917 I am writing this with Waterman Ideal pen and cannot write with any other. They are the "Best Dealers."

MRS. H. E. MACK,
501 Walker St.,
St. John, Mich.

I have used one of the Waterman Fountain pens for a number of years and find them just what they are represented to be "Ideal."

BESSIE S. ANDERSON,
Middletown, Del.

I have had experience with Waterman's Ideal Fountain Pen and should say it was indeed Ideal.

918

MRS. W. L. RINGER,
Lockeport, N. S. Canada.

I have had experience with Waterman pen and found it always satisfactory.

AMELIA A. COOKE,
R. F. D. #7 Norwich, Conn.

After considerable experience with fountain pens I find the Waterman the best. The quality and workmanship is A. No. 1.

DOROTHY H. ROBINSON,
304 Lark St.,
Albany, N. Y.

Plaintiff's Exhibit 16 919

I know the Waterman Fountain Pen to be durable and very best pen.

KATE M. WITHREL,
27 Judson St.,
Hartford, Conn.

The Waterman Ideal Fountain Pen I have found to be in every particular all that is claimed for it in "Waterman's" advertisements. It is something I should not care to journey without.

MRS. VIOLET SMITH,
14 Kensington Sq., 920
Lynn, Mass.

I have used a Waterman Fountain Pen for years and it has proven to be a friend indeed as well as a friend in need.

MRS. EDITH M. NESCOTT,
4 Spring St.,
Rochester, N. Y.

The Waterman Ideal Fountain Pen is of the highest quality and there are none better.

MRS. HELEN L. FOSBURGH,
411 Lake Ave,
Manchester, N. H. 921

My fountain pen came from one of the "best dealers."

MRS. F. A. MORRISON,
Atlantic Highlands,
New Jersey.

I have used Waterman's Ideal Pen and think it one of the widest and best known fountain pens there is. It writes smooth and has an easy flow of ink. Most fountain pens clog up—not so with Waterman's. It has more durability than any other pen I know of.

MRS. WILLIAM F. EDMONDS,
Castle Height Ave., and Bway.,
New York City.

922 *Plaintiff's Exhibit 16*

Waterman pens are tried and true.

MRS. JOHN F. REYNOLDS,
Pine Lawn Farm,
Iowa City, La.

Several members of our family have used Waterman's pens and have been greatly pleased with them.

MRS. H. V. STARRETT,
Warren, Me.

923 I have used a Waterman Fountain pen for years and have found it perfectly satisfactory.

MRS. R. M. WITHERELL,
Everett, Wash.

Have used the Waterman Ideal Fountain Pen for a number of years in my clerical work and find it superior to any other. Have always recommended it as such.

MRS. WALTER DUNKELBERGER,
15 E. Market Sq.,
Williamsport, Pa.

I am using one of their *Ideal* Fountain Pens. I have used it since March, 1904. It has always done fine work. No blot-
924 ting or anything that a fountain pen should not do. It is gold banded and I have never had to have it repaired. It is certainly a fine pen, none better.

MISS MARY D. ELDRED,
Stockbridge, Mass.

I am using a Waterman's Ideal Fountain Pen which I have carried for four years and which is in perfect condition. I gave my mother, who is a trained nurse, a Waterman pen for Xmas. she uses it in making out her record every day and finds it indispensable. I also gave my husband one the same

925

time, they both have the Clip-cap and are giving entire satisfaction.

MRS. EDWARD KAUFMAN,
123 Clark St.,
Canadaigua, N. Y.

I am writing this with a Waterman Fountain Pen. It is one that I have used for four years and found very satisfactory.

LAURA E. JONES,
428 Roslyn Place,
Chicago, Ill.

926

I have used a Waterman Ideal Fountain Pen for several years when employed in stenographic work, and always found it satisfactory.

MRS. F. L. HARRAR,
1200 W. 8th St.,
Wilmington, Del.

I have used a Waterman Ideal Fountain pen and found it superior to a number of other makes.

RUTH H. TOWNSEND,
Hudson, Mass.

927

I have a Waterman Fountain Pen which I prefer above all other kinds.

(MISS) M. G. DAVIS,
110 Winter St.,
Portland, Me.

I have been user of Waterman's Ideal Fountain pen for several years and have found it an indispensable luxury both when at home and when traveling.

(MISS) I. M. WALLACE,
216 Orange St.,
Montclair, N. J.

928 *Plaintiff's Exhibit 16*

The Waterman Fountain Pen is to my idea the best.

MRS. J. R. CARPENTER,
5452 Irving St.,
Philadelphia, Pa.

I have used a Waterman pen and found it very efficient.

MRS. E. V. DEWITT,
Montrose, Pa.

The Waterman pens have been used by four people in our family, and it is safe to say that at least eight of these pens have been purchased by the head of the family, for home use and as gifts. We use no other.

929 MABEL HOWLETT,
Wakefield, Mass.

I have one of the Waterman pens and think it the best ever made.

MRS. J. R. M.

I have used the Waterman pens and find it entirely satisfactory and all it is advertised to be.

MRS. C. F. LUNDBERG,
1316 14th Ave.,
Moline, Ill.

Have used Waterman pens. They are O. K.

MRS. W. D. MORREL,
930 Sherman, Tex.

Both my husband and I have used this pen for years— in fact practically to the exclusion of every other pen.

ETHEL M. THOMAS,
The Ayliner Apartment,
Ottawa, Canada.

The Waterman Fountain Pen I have been using for some time and find it an absolute necessity in my work as bookkeeper.

(MISS) ELLA H. CHISHOLM,
#213 East 8th St.,
Brooklyn, N. Y.

Plaintiff's Exhibit 16

931

I use a Waterman's Ideal Fountain Pen every day and find it very satisfactory.

(MISS) JENNIE SEWALL,
York Village, Me.

I have found the Waterman Fountain Pen—Ideal.

CATHERINE C. DOUBLEDAY,
41 Cedar St.,
Binghampton, N. Y.

The Waterman Pen I have used for five years. It is as good as ever today. I desire no better Pen.

932

MRS. SARAH M. REYNOLDS,
402 John St.,
Bridgeport, Conn.

I have used a Waterman's Ideal Fountain Pen constantly for the last two years and would not be without one.

CAROLINE R. WOODS,
Lutherville, Md.

I have used in my family Waterman's Fountain Pens and have found them eminently satisfactory.

G. D. BIRCHARD,
181 Bowdoin St.,
Springfield, Mass.

933

Am pleased to say that I have had a great deal of real satisfaction out of the "Ideal" pen I am now using.

AMIEE E. WAE,
Warren, Ind.

I have had two of the "Ideal Pens" both of which I used constantly until through carelessness I lost one and soon purchased the second only to have the departure of my younger

934 *Plaintiff's Exhibit 16*

brother for college take the second, and I've no doubt he is now singing its praises while I am mourning its loss.

MRS. F. H. BOUCHER,
208 So. 3rd Ave.,
Marshalltown, Ia.

I have been using the Waterman Pen for some time and find it excellent.

MRS. O. J. PARKER,
57 Alpine St.,
Dubuque, La.

935 The Waterman Ideal Fountain Pen, I can recommend very highly as to durability, having used one for over two years and it is in very good condition at the present time.

(MISS) RUTH MONTGOMERY,
Y. W. C. A.,
Long Beach, Calif.

I have used the Waterman Ideal Fountain Pen for about two years, during which time I have found it absolutely satisfactory.

EMANUEL LONDON,
41 Lewis St.,
Newark, N. J.

936 Waterman's Fountain Pen gives me great satisfaction.

J. R. SNYCKER,
Curry, N. Y.

In college work, school teaching and housekeeping, I used a Waterman and found it always ready, so reliable and so durable.

MRS. C. F. PATTERSON,
3124 California St.,
Omaha, Neb.

Plaintiff's Exhibit 16 937

I have used a Waterman Pen for years and like it very much.

MRS. ARTHUR F. BLOCKI,
1010 Washington St.,
Racine, Wis.

I have used a Waterman's Ideal Fountain Pen for a number of years and find it satisfactory in every way.

(MISS) SYBIL KEEP,
19 S. Olive St.,
Alhambra, Cal.

These Fountain Pens are the best made and give the most satisfaction. 938

MRS. ROYCE BECKWITH,
Niantic, Conn.

I own one of the Waterman Pens and would not be without it. It is the most satisfactory kind of fountain pen I have ever used.

AGNES K. APTHORP,
Tallahasse, Fla.

All of our family use a Waterman Pen and are well pleased with it.

MYRA WASHBURN,
606 N. Popular St., 939
Charlotte, N. C.

The Waterman Pens have been used in our family for years —they are unexcelled.

DAVID TAPPAN HOUSTON,
Mt. Gilead, Ohio.

I am using the Waterman pen,
Its the best on the market, and then,
Its just the right size,

940 *Plaintiff's Exhibit 16*

And will help me get the prize,
Or at least to be one of the ten.

MRS. J. E. SCHENCH,
5929 Chestnut St.,
New Orleans, La.

From experience I know the Waterman Fountain pen to be Ideal.

MRS. IRENE E. BEECHER,
Townley, Mich.

941 I use a Waterman Fountain pen much of the time and should not like to be without it—especially when traveling.

HELEN L. SMITH,
Y. W. C. A. Bldg.,
Cleveland, Ohio.

Have used a Waterman Fountain pen for the past five years and find it quite indispensable.

(MISS) M. E. MOORE,
36 St. Nicholas Place,
New York City.

I have used Waterman's Ideal Fountain Pen for several years and find it superior to all others.

942 MRS. O. P. HACKLER.

I have used one Waterman Ideal Fountain Pen for seven years and it has given the very best of satisfaction under all conditions where others have been no use at all. There is no question that Waterman pens are the best to be had.

MRS. WALTER W. HORAK,
321 B. Ave., West,
Cedar Rapids, Iowa.

Plaintiff's Exhibit 16

943

Am a constant user of Waterman's Ideal Fountain Pen and like it very much.

EDITH H. MARTS,
175 Arsenal St.,
Watertown, N. Y.

I have used a Waterman Fountain Pen for five years and it is entirely satisfactory.

ELIZABETH L. KEYES,
922 6th St.,
Springfield, Ill.

944

I am writing this letter with a $2.50 Waterman "Ideal" pen which has been in almost constant service for the past eight or nine years and is practically as good as new today.

MRS. F. W. ROPE,
208 Woodward Ave.,
Buffalo, N. Y.

Have used a Waterman Fountain Pen for years and it has always given satisfaction.

MRS. TOM ELROD,
Columbus, Ind.

945

I would like to say that the "Waterman Ideal Fountain Pen" is to my mind the best pen on the market. I have used the same pen for years and have no fault to find with it.

MRS. C. C. CORSA,
Allenhurst, N. J.

The Waterman Fountain Pen is excelled by no other.

MRS F. R. ALEXANDER,
1217 Oak Ave.,
Evanstan, Ill.

946 *Plaintiff's Exhibit 16*

I have used a Waterman fountain pen for many years and think these pens the best on the market.

(MISS) CLARA JOSLYN CAGWIN,
Walsenburg, Colorado.

I am a trained nurse, have always used the Waterman fountain pen and like it very much as it never stains the fingers.

(MISS) IDA M. ARVIDSON,
1491 No. Clarke St.,
Chicago, Ill.

947 I have used the Waterman Ideal Fountain Pen and am very well pleased with it.

MRS. P. F. BURTCH,
Morrison, Ill.

We have used Waterman's Ideal Fountain Pens for years and find them excellent.

JOHN F. KLINE,
Allentown, Pa.

I consider the Waterman Ideal Fountain Pen a useful article of high grade workmanship.

(MISS) HATTIE B. BISSIKUMMER,
608 Swan St.,
948 Dunkirk, N. Y.

I think the Waterman Ideal Fountain Pen is excellent at the present moment I am using one and have not had any other in my hand for three years, it is still giving perfect satisfaction and I shall never be without one.

ADELAIDE M. READ,
605 Detroit St.,
Flint, Mich.

Plaintiff's Exhibit 16 949

We are fond of the Waterman pen and have had 5 pens in the family.

L. G. LORALD,
Hayes, So. Dakota.

The Waterman Ideal Pen is all that its name implies. I had the misfortune to lose mine not long since which makes me prize it that much more highly, for substitutes are not satisfactory.

MRS. HARRIET C. EAMES,
Muskegon, Mich.

950

I have used one of Waterman's Ideal Pens for eight years. It is as good now as it ever was. Ideal is certainly the correct name for them.

RUTH A. RICHARDSON,
1144-21st St.,
Ogden, Utah.

My husband and brother have both used Waterman Fountain Pen and pronounced them all they are advertised.

MRS. M. W. HOLT,
Norfolk, Va.

I have used a Waterman's Ideal Fountain Pen and it has given me the greatest satisfaction not only from its simplicity of construction but because of its accuracy and durability after years of use. 951

MRS. CARRIE TALBOT.

I use Waterman's Ideal Fountain Pen in my writing and find it to be worthy of recommendation.

ELIZABETH D. SUPLEE,
Malvern, Pa.

952 *Plaintiff's Exhibit 16*

I have been using a Waterman's pen since I can remember and today I would not exchange for any other on the market.

M. H. GARLICK,
Waynesboro, Ga.

I have used this Fountain Pen and consider Waterman's *Ideal*.

MRS. JAS. G. HARRIS.

I have always used a Waterman's Ideal pen and would not be without it. It is especially valuable when one is traveling.

MRS. NELLIE L. HODGES,
953 1733 Kilbourne Place,
Washington, D. C.

I would not sell my Waterman Fountain Pen for $25.00 if I could not replace it.

(MISS) E. L. CLARK,
554 Mott Ave.,
New York, N. Y.

According to my experience the Waterman pens are very satisfactory and are among the best on the market.

MRS. A. F. GOODHUE,
Fort Fairfield, Me.

954

I have had a great deal of experience with fountain pens and have found Waterman's to be the best.

MRS. H. M. HENSHEY,
Hollidaysburg, Pa.

This letter as is all my correspondence is written with a Waterman's Ideal Fountain Pen and it is invaluable in my family.

MRS. T. B. OWENS.

Plaintiff's Exhibit 16 955

I have used Waterman Ideal Fountain Pen and can readily testify to its merit.

MRS. W. A. GODDARD,
23 Church St.,
Rutland, Vt.

The Waterman Pen A comfort and delight at home or abroad. I have used my Waterman pen with which I write this for seven years.

MRS. CLOYD L. FRITZE,
Angels Camp, Calif.

Am writing this letter with a Waterman and with my left hand. That pen is adapted to any style or manner of writing. 956

MRS. CHARLES A. NOBLE,
313 S. Eastern Ave.,
Joliet, Ill.

I have used and enjoyed using Waterman's Ideal Fountain Pen for a time and consider it a very good pen.

(MISS) RUTH C. ANDREWS,
Hudson, Wis.

My husband has used a Waterman's Ideal Fountain Pen since 1901, and that same pen gives him as good satisfaction today as when he bought it.

MRS. J. A. FLEMINGS, 957
480 Lebanon St.,
Melrose, Mass.

I have had some experience with Ideal Fountain Pen and have always found it satisfactory.

MRS. C. H. BANKHEAD,
Elkins, W. Va.

The Waterman Ideal Fountain Pen is the only article in the above list I have had experience with. The pen I have found to be "exactly as advertised" and have put it to a good deal of constant use.

MRS. G. A. WIEDERMANN,
4540 N. 16th St.,
Phila., Pa.

958 *Plaintiff's Exhibit 16*

I have used a Waterman Ideal Fountain Pen and have found it just as represented.

MRS. CHAS. F. FISHER,
Homer, N. Y.

I have used the Waterman Pen and with only the best results.

MISS FLORIE ANDREWS,
Baoneville, Missouri.

I have used Waterman's pen and have found it the most satisfactory pen I have ever used.
959

F. FEENEY.

Waterman's Ideal Fountain Pen I have seen appreciated by clergymen, physicians, lawyers, authors, nurses, artists, invalids and students.

RUTH POPE,
1206 Barastown Road,
Louisville, Ky.

Waterman's Ideal Fountain Pen is regarded by all I know as the safest investment made in fountain pens.

Mrs. G. B. ELLIOTT,
3816 Washington Boulevard,
960 Indianapolis, Ind.

I have used an Ideal Fountain Pen for years and have always been satisfied with it.

MISS CLARA SCHOUFELD,
458 E. 31st St.,
Chicago, Ill.

I have had experience with the Waterman Ideal Fountain Pen, too much can not be said of it. My husband has one that

he and I have used for twelve years and it appears to be good for as many more.

MRS. G. R. ELLIS,
Rehoboth, Del.

I consider Waterman's Ideal Fountain Pen the best on the market for reliability and also for durability.

MISS WINIFRED T. KIMBALL,
1311 Ontario Ave.,
Niagara Falls, N. Y.

We have a Waterman pen that has been used with much satisfaction. 962

L. H. HARDING,
Casper, N. Y. C.

I have used a Waterman's pen during the past year, and find it very satisfactory.

MISS BEULA B. FRANCIS,
335 Tenth St.,
Connellsville, Pa.

Waterman Ideal Pen which is now in active use, and has been for the past 8 years in my possession and is as good now as when purchased.

ALBERTA JACOBUS, 963
Cedar Grove, N. J.

My husband has an Ideal Fountain Pen and is never without it, except when I have it. I have also given them away Christmas and I think it the only pen.

MRS. A. H. PURNELL.

I have used one of the Waterman pens almost constantly for five years and always found it very good.

Mrs. R. W. SNYDER,
1015 Vine St.,
Scranton, Pa.

964 *Plaintiff's Exhibit 16*

We have a Waterman pen with which we are much pleased.

MRS. W. H. REYNOLDS,
196 Greenwood St.,
Auburn, R. I.

I am acquainted with the Waterman Ideal Fountain Pen and like every one else who uses it, I swear by my "Waterman."

MRS. G. W. FAIRGRIEVE,
Bantam,
Litchfield Co.,
Conn.

965 I have used the Waterman Fountain Pen for years in my family, finding it a standard of excellence in every respect.

MRS. VICTOR COBB,
Falls Church, Va.

Have had a Waterman Fountain Pen for a number of years and it is as good as new.

Mrs. H. C. BROWN,
58 West Stratford Ave.,
Lansdowne, Pa.

I am using a Waterman Ideal Fountain Pen and am sure there is none better.

966 MRS. C. R. YANSON,
450 1st Ave.,
Astonia, N. Y.

I am the possessor of a Waterman pen and have used it with much satisfaction for years.

EDNA C. WHEELER,
89 Belmont Ave.,
Springfield, Mass.

Plaintiff's Exhibit 16 967

Whether for man, wife, maid or student, for comfort in writing, no pen can surpass the Waterman Ideal Fountain Pen, made in various styles.

MISS CARRIE E. GREEN,
Rushville, N. Y.

I have used a Waterman Fountain pen for years and still use one, finding it satisfactory in every respect.

MRS. A. W. POWELL,
Chatham, N. Y.

My father has been using a Waterman Ideal Fountain Pen, one of those with silver filigree work over it, for a number of years. He has had the pen changed with very satisfactory results and at a very slight cost, if any at all. 968

MISS LILLIE L. WEISS,
120 N. Main St.,
Bethleham, Pa.

I have used the Waterman Fountain pen and like it very much.

(MISS) IDA C. NICHOLS,
3210 Montgomery Ave.,
Phila., Pa.

The Ideal Fountain Pen is considered the best on the market to-day. They stand more use than any other pens, and need the least repairing. 969

MABEL E. WYATT,
343 Gregory Ave.,
Passaic, N. J.

I have used the Waterman's Ideal Fountain Pen and considered it to be, indeed, an Ideal one.

(MISS) M. A. McLAUGHLIN,
80 Bay St.,
Glens Falls, N. Y.

970 *Plaintiff's Exhibit 16*

I am still writing with Waterman pen after six years of service and it is O. K.

MRS. F. W. TODD,
240 Main St.,
Lakewood, N. J.

This pen is certainly ideal and has given both my husband and myself perfect satisfaction for years.

MRS. E. A. WESTBURY,
Iowa Falls, Iowa.

971 We have a Waterman pen and it is a delight to use it.

MRS. HARRY BRINER,
721 N. Second St.,
Reading,
Berks Co. Pennia.

I have had very satisfactory experience with Waterman's pens.

GRACE PARMELE,
Presbyterian Hospital,
Chicago, Ill.

Have used a Waterman pen for ten years. Am devoted to it

MRS. FRANK MAYTHORN,
Colhin, N. Y.

972

I have used this Waterman Ideal pen for four years and could not write without it. It flows with uniform ease and is always ready for use. Our family have a Waterman pen apiece and consider them the finest made.

HELEN F. BASHFORTH,
Griggsville, Ill.

I have used Waterman Ideal Fountain Pen for several years and have never known it to fail.

MISS ERNESTINE OSTEROLH,
14 Morgan Oak St.,
Cape Girardeau, Mo.

Plaintiff's Exhibit 16

973

Have used a Waterman Ideal for eight years and would not part with it.

MRS. H. E. SATTERFIELD,
West Raleigh, N. C.

I have tested the qualities of Waterman Fountain Pen and can say that they are first class and I consider it a fine pen.

MRS. WALTER D. GARRETSON,
1503 Grace St.,
Chicago, Ill.

I have had experience with Waterman pen and find it to be all they claim. 974

MRS. FRANK W. KLINE,
North Germantown, N. Y.

I have a Waterman pen which has done good service for the past four years and that during that time I have had no word of fault to find with it.

KATHARIN HALL,
Owen, Wis.

Ideal Fountain Pen is one of the first and finest pens made. I have used one steady, it shows no weakness in the point, the Clip-Cap prevents you from losing it, a person would not want a better pen. 975

JOHN H. McKEE,
1546 Fourth Ave.,
Watervliet, N. Y.

I have used Watermans Ideal Fountain Pens for several years. Have found them most satisfactory—Ideal. I can pay them no higher tribute than to say they fully deserve a full page "ad." in the advertising section of our excellent magazine.

MRS. W. W. EMMONS,
145 Hamilton Ave.,
Portland, Me.

976 *Plaintiff's Exhibit 16*

The name "Waterman" on a fountain pen, I think is the only recommendation necessary.

L. DEMPSEY,
Public School No. 20
N. Albany, N. Y.

Wish to recommend Waterman's Ideal Fountain Pen. I always use a fountain pen in preference to any other, and have found Waterman's the best and most satisfactory.

FLORENCE ROBINSON,
123 Mt. Auburn St.,
Cambridge, Mass.

977

Have used many other makes but find Waterman is the ideal pen.

JOHN J. DOODY,
Sanford, Me.

Watermans pen I could not be without, although I am a woman. It is the handiest ever.

WINNIE F. LEAMY,
207 Sigourney St.,
Hartford, Conn.

I have a Waterman pen which I think is one of the best things
978 that have been on the market as they are always ready to use.

MRS. G. B. COBB, JR.,
80 Fairview Ave.,
Plainfield, N. J.

I have a Waterman pen and it is well named.

MRS. CLARA R. MORSE,
120 Court St.,
Newtonville, Mass.

Plaintiff's Exhibit 16 979

Have three Waterman pens in the house, a very useful family article.

MRS. LENA KRICHBAUM,
207 Bellevue Ave.,
Upper Montclair, N. J.

The Waterman Ideal Fountain Pen is an excellent pen, never failing always ready to use.

MRS. FRED. D. SPRAGUE,
15 So. Merriam St.,
Pittsfield, Mass.

I have had very satisfactory results from my Waterman pen which is indispensable in my home. 980

VIVIAN T. MELLOR,
140 Hanover St.,
Trenton, N. J.

We have used a Waterman pen for years and have always found it perfectly satisfactory in every respect. In fact after trying several other makes the Waterman is the only one we have found which is sure to not leak, and soil ones fingers.

EMILY M. BOLTNY,
Omaha, Neb.

Having used the Waterman Fountain pen I can hardly use any other, I like it so much. 981

MRS. H. I. ALLEN,
111 S. Laurel St.,
So. Bend, Ind.

I use a Waterman Ideal pen and of course, find it fills the bill.

MRS. ERNEST KITCHEN,
Lawndale, Phila., Pa.

982 *Plaintiff's Exhibit 16*

I have used a Waterman Ideal pen since I went to High School. I would use no other.

OLIVE M. KELLOCK,
4 Beaufort Place,
New Rochelle, N. Y.

Have used Waterman pen and consider it a first class article.

C. W. PORT,
52 Herkimer St.,
Brooklyn, N. Y.

983 This was written with an Waterman pen which I have used and abused for several years without repairs and I find it writes as well now as when new.

MRS. H. P. KERRISON,
130 Brooks St.,
Brighton, Mass.

Have used L. E. Waterman's Fountain Pen for six years and would use no other makes and their pens surpass all others.

ELIZABETH L. PACE,
123 Wadsworth Ave.,
New York City.

984 I am writing this letter with a Waterman pen, which I have carried in my hand-bag (woman like) for seven years and as this shows will probably do the same for a like term of years to come. Their pens are practically infallible.

LOUISE ELLIOTT,
366 Main St.,
Buffalo, N. Y.

I have used Waterman's pen and always was very well satisfied with it because it could always be depended upon.

MRS. L. H. REEMTSEN,
Burdette, Iowa.

Plaintiff's Exhibit 16

985

I have used a Waterman Ideal Fountain Pen for 15 years with perfect satisfaction.

MRS. H. A. PATTERSON,
252 No. 7th St.,
Newark, N. J.

I have used a Waterman pen for eight years and always find it in good condition.

ELSIE L. TRAVIS,
51 Chestnut St.,
Brighton, Mass.

986

I have a Waterman's pen and it is the best I ever had. Have used it for four years and it seems as good as new.

MANNIE MOON,
Washington C. H., Ohio.

I have used a Waterman Ideal Fountain Pen for nearly a year and my experience has been extremely pleasant and satisfactory. In fact I am lost without it. It is 'Ideal.'

MRS. C. W. ELLIOTT,
80 Whitney Place,
Buffalo, N. Y.

987

I have used the Waterman Ideal Fountain Pen and find same to be best on the market. My pen has been satisfactory in every way and I can most heartily recommend said pen to any one.

MRS. E. L. CANNON,
217 Glasgow St.,
Portsworth, Va.

Have used an L. E. Waterman Fountain Pen with entire satisfaction. Have recently purchased another.

ADDIE ROSAMOND,
Easley, S. C.

988 *Louis W. Ash*

In addition to the foregoing there were other replies but they were destroyed some months ago, as it was not expected there would be any further use for them."

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

989 L. E. WATERMAN COMPANY, Plaintiff, vs. MODERN PEN COMPANY, Defendant. } In Equity.

New York, March 9, 1911.

Met pursuant to agreement.

Present:

S. S. Watson, for the plaintiff.
Morton Stein, for the defendant.

990 LOUIS W. ASH, a witness called on behalf of the complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Watson:

Q1. Please give your name, age, residence and occupation? A. Louis W. Ash; age, 44 years.

Mr. Stein: I ask for an adjournment upon the record upon the ground that Col. Bacon, who alone is familiar with the case so far as the defendant is concerned, is actually engaged in the Gottsch Estate litigation before Surrogate Ketchum in Brooklyn and cannot be here, and

that the testimony to be taken, if taken, is taken over our objection, on the ground that the one counsel who knows about the case cannot be here and has a legal excuse, and I ask my adversary to consent to an adjournment until some hour this afternoon when Col. Bacon can be here.

Mr. Watson: This testimony is taken pursuant to notice duly given and is a continuation of sessions held on previous days. Col. Bacon was present at the session which was held on March 7th, and at the close of the session the hearing was adjourned until March 8th, at which time it was adjourned to this hour and counsel for defendant was immediately notified. The testimony of this witness has been in substance admitted in affidavits submitted by the defendant in this action, on preliminary injunction. This witness is entirely disinterested and is here under subpoena, and the facts to be deduced are so very simple that we do not feel disposed to take the witness' further time. If counsel for defendant desires to further cross examine this witness at some future day we will try to arrange it. 992

Mr. Stein: May it appear on the record that the witness does business in Jersey City and resides in Hoboken; that Mr. Stein has no knowledge as to the nature of the testimony to be adduced, or as to any admission, if any, contained in any affidavits in this action. 993

Mr. Watson: The admissions referred to by defendant's counsel are contained in the affidavit of Hobart W. Geyer, verified April 27, 1910, and particularly in exhibits annexed to that affidavit and the testimony simply refers to advertisements appearing in the Jersey City papers, of Wolfson Bros., of Jersey City, the fact that these advertisements occurred, and the fact that the defendant paid a portion of the cost of those advertisements.

Q2. What is your residence? A. Hoboken, New Jersey.

994 *Louis W. Ash*

Q3. Your business? A. Superintendent and advertising manager for Wolfson Bros.

Q4. Of Jersey City? A. Yes.

Q5. Wolfson Bros. is a department store? A. Yes.

Q6. And in connection with that store they sell fountain pens? A. Yes.

Q7. I show you an advertisement which appeared in the Jersey City Journal, Saturday evening, December 11, 1909, on page 2 of the paper, and I ask you if that was inserted by Wolfson Bros.? A. Yes.

Q8. And on the same day the same advertisement appeared in other Jersey City papers? A. In a Hoboken paper.

995 Q9. What was the name of that paper? A. The Hoboken Observer.

Q10. That advertisement appearing in the Hoboken Observer was an exact duplicate of the one before you? A. Yes.

Q11. Did the Modern Pen Company of 27 Thames Street, New York, pay any portion of the cost of this advertisement? A. Yes.

Q12. What portion? A. One-half the cost of their space.

Q13. You refer to the space allotted to fountain pens? A. Yes.

Q14. And they paid that same proportion of the advertisement appearing in the Hoboken Observer of the same date? A. Yes.

996 Q15. And that payment was made by the deduction of the amount of their payment from the amount which Wolfson Brothers owed them on goods bought A. Yes.

Q16. You are here under subpoena? A. Yes.

Direct-examination closed.

Mr. Stein: Can it be stipulated on the record that any cross-examination of mine shall not be deemed complete and that Col. Bacon shall have a right to re-subpoena this witness, either for further cross-examination or as a witness in chief, and upon such latter examina-

tion complete the cross if such further cross be necessary.

Mr. Watson: Of course the defendant can subpoena this witness as a witness in chief if he sees fit at the time he takes his answering proofs.

Mr. Stein: That does not meet my question. Can the witness be further subpoenaed for cross-examination, if any further be deemed necessary by Col. Bacon; in other words, I do not want to bring Mr. Ash over here again.

Mr. Watson: We shall not produce Mr. Ash again. If the defendant desires to call him as a witness, of course, he is at liberty to do so when he takes his answering proofs.

998 Mr. Stein: And at that time to be at liberty to cross-examine, if necessary, as to the matters brought out today by you on your direct?

Mr. Watson: They are at liberty to examine him as their own witness.

CROSS-EXAMINATION by Mr. Stein:

XQ17. How long after this advertisement appeared did the Modern Pen Company pay you for one-half of the fountain pen space in the ad or for that part of the ad devoted to the Waterman Fountain Pen?

Mr. Watson: Objected to as entirely immaterial. 999

A. I do not recall the exact space of time. Possibly within ten to fifteen days. I do not just recall. After correspondence with them in reference to the payment.

XQ18. Did you have any correspondence with them prior to the insertion of these particular advertisements? A. Not to my recollection.

XQ19. The correspondence arose subsequent to the publication of those advertisements? A. Yes.

XQ20. How much was the amount they paid? A. I think it was $3 as far as I can remember.

1000

XQ21. Did you submit the advertisements to them before they were published? A. No.

XQ22. I show you a paper marked Exhibit II, page 441 of the printed record in the United States Circuit Court of Appeals for the Second Circuit, in this action, of the appeal from the order of Judge Hough, and I ask you whether that is a copy of a letter that you sent to the Modern Pen Company? A. Yes.

Mr. Stein: It is understood that this letter is now in evidence?

Mr. Watson: It is so admitted.

1001

XQ23. This letter was written three days after the advertisement appeared? A. Yes, according to the dates.

XQ24. And was this the first correspondence, the first talk of any kind, that you had with A. A. Waterman & Co. relative to that ad? A. The first that I was personally concerned in.

XQ25. I ask you to read Exhibit JJ at page 442 of that record which purports to be a letter from the Modern Pen Company to Wolfson Brothers, dated December 16, 1909, and refers to your letter of the 14th inst., and I ask you whether you received the original of that? A. Yes.

It is admitted by Mr. Watson and by Mr. Stein that Exhibits II, JJ, KK, LL and MM on pages 441 to 444 of the record are already in evidence.

1002

These are letters respectively dated December 14, 1909, from Wolfson Bros. to A. A. Waterman; the answer thereto of December 16, 1909, sent to Wolfson Bros. by the Modern Pen Company; the reply of December 17, 1909, sent by Wolfson Bros. to the Modern Pen Company; the letter of December 18, 1909, sent by the Modern Pen Company to Wolfson Bros.; and the letter of December 20, 1909, sent to the Modern Pen Company by Wolfson Bros. per L. W. Ash.

XQ26. You are the L. W. Ash referred to in that letter of December 20th? A. Yes.

XQ27. And was each of these letters that I have just noted received by you personally and sent by you personally? A. As the representative of the firm, yes.

XQ28. But you attended to it personally? A. Yes.

XQ29. Have you the entire charge of the advertisements of Wolfson Bros. ? A. Subject to the approval of those concerns.

XQ30. You prepare them? A. Yes.

XQ31. And arrange for their publication? A. Yes.

XQ32. And for the matter contained therein? A. The matter contained therein is submitted to me by the different heads of the departments.

XQ33. Do I correctly understand that at no time until the first of these letters was the subject of these advertisements or the contents thereof submitted to the Modern Pen Company or A. A. Waterman & Co.? A. They were not submitted to them. 1004

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ34. In the letter of December 17th it appears that the cost of the space of the fountain pen advertisement referred to was $3 for each insertion; is that correct? A. Yes.

RDQ35. $6 for the two insertions? A. Yes. Both insertions were on the same day.

RDQ36. It appears in the letter of December 14, 1909, that you submitted a copy of these advertisements to A. A. Waterman & Co.; is that correct? A. According to the letter, yes. 1005

RDQ37. And you submitted that copy of the advertisements before they paid for them or agreed to pay for them, did you not? A. I understood that arrangements had been made with the A. A. Waterman Company to pay for one-half of the advertisement, but I did not know until after the advertisement was inserted that they were to pay it.

Mr. Stein: I move to strike out the witness' understanding.

RDQ38. The advertisement or a copy of the advertisement was submitted to the Modern Pen Company before they paid their portion of the cost? A. Yes.

RDQ39. And after they had seen the advertisement, or a copy of it, they paid their portion of the cost? A. After controversy over the matter.

RDQ40. The controversy being what appears in these letters? A. In these letters, yes.

RE-CROSS EXAMINATION by Mr. Stein:

RXQ41. There was no submission of this ad to A. A. Waterman & Co. or the Modern Pen Company until after the actual publication in these papers? A. No.

RXQ42. And the controversy arose over the fact that the ad did not describe the goods as A. A. Waterman's pens? A. Yes.

RXQ43. And they were merely described as Waterman? A. Waterman pens.

RXQ44. And the defendant complained and wanted you to describe its pens as A. A. Waterman Company pens? A. Yes.

RXQ45. Did you subsequently so describe your pens when you advertised? A. Yes.

RXQ46. And did you advertise these pens as Waterman pens? A. No.

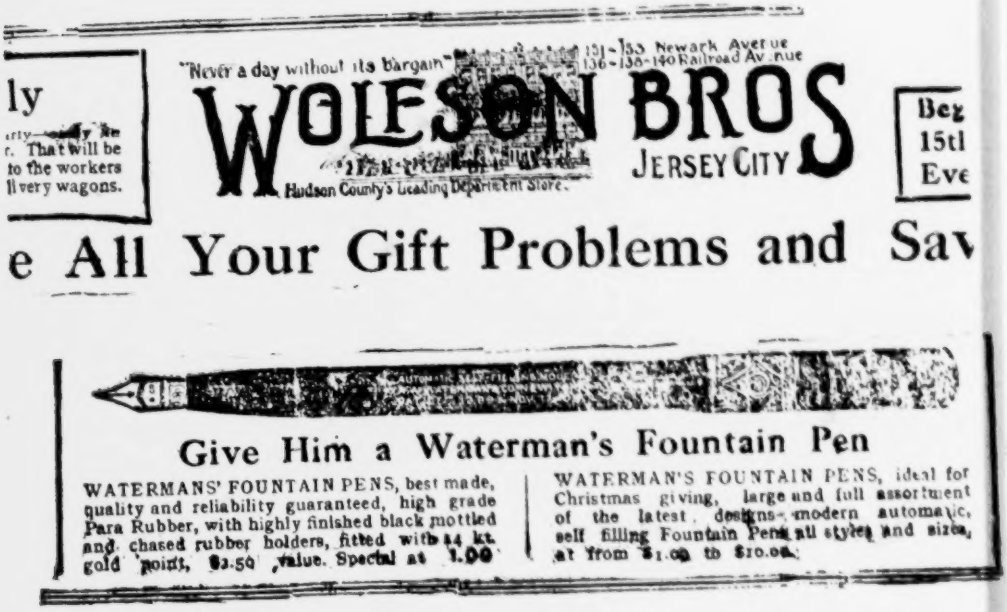
RXQ47. Always used the term A. A. Waterman pens? A. Yes.

Deposition closed.

Signature waived.

Plaintiff's Exhibit 11.

Wolfson Bros. Advertisement of A. A. Waterman & Co. Pens.


"Never a day without its bargain"
131-135 Newark Avenue
136-138-140 Railroad Avenue
WOLFSON BROS
JERSEY CITY
Hudson County's Leading Department Store.
e All Your Gift Problems and
Give Him a Waterman's Fountain Pen
WATERMANS' FOUNTAIN PENS, best made, quality and reliability guaranteed, high grade Para Rubber, with highly finished black mottled and chased rubber holders, fitted with 14 kt. gold point, $2.50 value. Special at 1.00
WATERMAN'S FOUNTAIN PENS, ideal for Christmas giving, large and full assortment of the latest designs, modern automatic, self filling Fountain Pens, all styles and sizes, at from $1.00 to $10.00.

1012 **Plaintiff's Exhibit 12.**

Letters Referred to in Mr. Ash's deposition.

December 14, 1909.

Messrs. A. A. Waterman & Co.,
125 Greenwich St.,
New York City.

Gentlemen:

Herewith we beg to hand you copy of advertisement, which appeared in last Saturday evening's issue of two of our local papers.

1013 The cut, of course, appeared much plainer in the regular issue than on this proof.

We presume that it will be agreeable to have us charge you with one-half of the cost of this advertisement.

Anticipating your prompt reply, we are

Yours very truly,
WOLFSON BROS.

LWA/E.

Dec. 16, 1909.

Messrs. Wolfson Bros.,
1014 Jersey City.

Dear Sirs:

Your letter of the 14th inst., enclosing copy of your ad. which appeared in last Saturday evening's papers, received and contents have our attention.

We cannot see that this ad. covers our pens at all. In advertising our line we have to be very particular to advertise it as A. A. Waterman & Co.'s pens, while your ad. would lead the general public to infer that it was the Waterman's Ideal pen.

We do not make a practice of paying for advertising of this kind, and you do not give us any idea as to what you figure the

Plaintiff's Exhibit 12 1015

proportion of cost for the ad. would be. If you will let us know what the cost is, we will then let you know if we will pay a portion of it providing you wish to advertise our line under its proper style.

Yours truly,
THE MODERN PEN CO.,
HOBART W. GEYER,
Ass't. Treas.

Dict. to N. H.

1016

Jersey City, December 17, 1909.

The Modern Pen Co.,
125 Greenwich Street,
New York City.

Gentlemen:

Replying to your favor of the 16th inst., we beg to advise you that the cost of the advertisement, copy of which we sent you, is $3.00 for each insertion, or $6.00 in all.

We did not intend this advertisement to be misleading, nor do we think it is; we merely advertised Waterman's pens, which we think your pens are entitled to be called.

However, if you prefer that we should advertise your goods as the A. A. Waterman pen, we shall be glad to do so. 1017

Awaiting your further reply, we are

Yours very truly,
WOLFSON BROS.

LWA/E

1018 *Plaintiff's Exhibit 12*

Dec. 18, 1909.

Messrs. Wolfson Bros.,
Jersey City, N. J.

Dear Sirs:

Your letter of the 17th inst. received, and we will be very much pleased to stand half the cost of the ad., as per your former request.

For your own sakes as well as ours, it will be necessary for you to advertise the goods as A. A. Waterman & Co.'s, so that you may have no trouble with the L. E. Waterman Co.

1019 Yours truly,
THE MODERN PEN CO.,
HOBART W. GEYER,
Ass't. Treas.

Jersey City, N. J.,
December 20, 1909.

The Modern Pen Co.,
125 Greenwich Street,
New York City.

Gentlemen:

1020 Replying to your favor of the 18th inst., we beg to enclose herewith our bill for one-half cost of the advertisement, inserted December 11th.

We note your further remarks regarding the similarity of the names, and the proper manner in which to advertise your goods, and in the future we will do so.

Thanking you for your kind consideration, we are

Yours very truly,
WOLFSON BROS.,
L. W. ASH.

LWA/E.

UNITED STATES CIRCUIT COURT, 1021

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.
} In Equity.

New York, March 11, 1911.

Met pursuant to adjournment. 1022

Present:

S. S. Watson, for Plaintiff.
Alexander S. Bacon, for Defendant.

Counsel for complainant states on the record that two witnesses, Peter Hoffman and Mrs. Peter Hoffman, were duly subpoenaed to appear here at this hearing, this morning at eleven o'clock, and that they have failed to appear, and that it is now 11:40, and counsel has waited forty minutes for their appearance.

Adjourned to Monday, March 13, 1911, at 2 P. M. 1023

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.
} In Equity.

Testimony taken on behalf of the plaintiff for final hearing, before Frederick M. Adams, an Examiner of this Court at the office of Watson & Raymond, 10 Wall Street, New York, on Wednesday, January 11, 1911, pursuant to notice hereto annexed.

Appearances:

Samuel S. Watson, for Plaintiff.
A. S. Bacon, for Defendant.

Adjourned from 10:30 o'clock in the forenoon until 3 o'clock in the afternoon on January 11, 1911.

———

January 11, 1911, at 3 P. M.

HENRY W. ROGERS, a witness produced on behalf of the complainant, having been duly sworn, testified as follows:

Direct-examination by Mr. Watson:

Q1. Please state you name, age, residence and occupation? A. Henry W. Rogers, age, 38; residence, Maplewood, New Jersey; occupation, manufacturing and retail stationer.

Q2. Where is your place of business? A. 37 Fulton Street, New York.

Q3. What is the name of the firm with which you are connected? A. Wilbur & Hastings.

Q4. How long have you been in the stationery business? A. Over twenty years.

Q5. During this time what part of it have you been dealing in and handling fountain pens? A. The greater part of that time; about sixteen years.

Q6. Are you generally familiar with the fountain pens that have been on the market for the last sixteen years? A. Yes.

Q7. How long have you been familiar with the Waterman's 1028
Ideal fountain pen? A. Ever since I have been in the business.

Q8. How long have you been connected with any concern that has been selling Waterman's Ideal fountain pens? A. Ever since I have been in the business. We have handled and sold fountain pens that entire time.

Q9. And all this time have you been selling and handling Waterman's Ideal Fountain Pens? A. Yes.

Q10. By what, name, if you know, are the pens manufacturned by the L. E. Waterman Company generally known in the market? A. As "The Waterman Pen;" "Waterman's Pens;" "Waterman's Ideal Pen."

Q11. By what name are the plaintiffs in this case usually 1029
known in the trade and by the public? A. Waterman Company.

Q12. How long has that been the fact, to your knowledge? A. Sixteen years, anyhow.

Q13. And how long have their pens been known as Waterman's Pens, or Waterman Fountain Pens? A. Ever since I have been in the business.

Q14. When pens are called for by customers as Waterman's pens, or Waterman's fountain pens, what is meant, as the trade understands it? A. Pens manufactured by the L. E. Waterman Company.

1030 *Arthur N. Chaffee*

Q15. Do you know whether that is a fact generally known in the trade? A. It is an understood thing that the "Waterman Pen" would call for a pen manufactured by the L. E. Waterman Company.

HENRY W. ROGERS.

Cross-examination reserved.

Adjourned to Friday, January 13, 1911, at 11:30 A. M.

1031 SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES CIRCUIT COURT,

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.
} In Equity.

New York, January 20, 1911.

1032 Met pursuant to notice and by agreement.

Present: Counsel as before.

ARTHUR N. CHAFFEE, a witness called in behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Watson:

Q1. What is your name, residence and occupation? A. Arthur N. Chaffee: I reside at 772 St. Nicholas Avenue, New York City; buyer for the stationery department of Gimbel Brothers, New York.

Q2. Where is their place of business? A. Broadway at 32nd and 33rd Streets and Sixth Avenue, New York City.

Q3. And their business is that of a large department store? A. Yes.

Q4. And in connection with that store they have a department in which stationery and fountain pens are sold? A. Yes.

Q5. How long have you been connected with Gimbel Brothers? A. Since last July, 1910.

Q6. And prior to that time with whom were you connected? A. I was connected with John Wanamaker, New York City.

Q7. That is also a large department store, is it not? A. Yes.

1034

Q8. And they have a department in which are handled and sold stationery and fountain pens? A. They have.

Q9. What was your connection with that concern, in what capacity? A. I was assistant buyer for the stationery department.

Q10. How long were you with John Wanamaker in New York City? A. I was with him for two years and eleven months.

Q11. Prior to that time with whom were you connected? A. I was with George E. Newcombe & Co., 621 Broadway.

Q12. What was their business? A. They were manufacturing stationers.

Q13. Did they handle and sell fountain pens? A. They did.

1035

Q14. How long have you been in or connected with any business that handled or dealt in fountain pens? A. For seventeen years, with the exception of two years that I was with George E. Newcombe.

Q15. And prior to your connection with Newcombe & Co. with whom were you connected? A. I was with the American News Company, their branch at Springfield, Mass.

Q16. And at that place of business were fountain pens handled? A. Yes, they were; there was a retail department there.

Q17. Were you connected with that department? A. I was; I was buyer for the department.

1036 *Arthur N. Chaffee*

Q18. And during the seventeen years, with the exception named by you, have you been personally familiar with the fountain pens handled by the concerns that you have been connected with? A. Yes.

Q19. And have you been during this period personally familiar generally with fountain pens on the market? A. I have, very familiar.

Q20. During the period you have been handling and selling fountain pens, during what time have you handled and sold Waterman's Ideal Fountain pens? A. As I stated before, with the exception of the couple of years that I was with Newcombe, I handled them for the full period of time that I have been
1037 in the stationery business.

Q21. By what name are these pens commonly known to the trade by the public, if you know? A. They ask for and speak of them under the name of Waterman's Pen and the Ideal Pen and the Waterman Fountain Pen, and they speak of it as Waterman's Fountain Pen, and Waterman's Pens.

Q22. What is the name most generally used in your experience? A. Most always a customer will ask for a Waterman pen; possibly they will ask for an Ideal.

Q23. Are these pens well known among the trade and the public generally? A. They are very well known.

Q24. How long has that been the fact, as far as you know? A. Back as far as I have had any experience with buying and sell-
1038 ing pens.

Q25. How long has it been a fact that the public, and purchasers generally, called for these pens as Waterman's pens? A. Just as far back as I have had any experience in selling pens.

CROSS-EXAMINATION by Mr. Bacon:

XQ26. Have you ever dealt with the A. A. Waterman pens? A. No, sir, I never had any dealings with them.

XQ27. Never handled them at all? A. No, sir.

XQ28. Never have been with any firm that ever handled them? A. No, sir.

XQ29. You handle other pens, did you, besides Waterman's? A. Yes, other manufacturers' makes.

XQ30. Then you do not know how people speak of the A. A. Waterman pens when they purchase them? A. That I cannot say.

XQ31. You do not know but what they, too, are called for as Waterman pens, do you? A. No, I cannot say as to that.

XQ32. You simply have had no experience with that pen at all? A. No experience whatever.

XQ33. You have heard of it often? A. I have heard of it 1040
and have had it confused with other pens that I have been selling, a great many times.

XQ34. That is, people would ask for a Waterman pen when they wanted A. A. Waterman? A. No, I mean principally to the extent that I have had fountain pens brought to my departments for repairs or for exchange, or to be fixed up in some way.

XQ35. And those people had A. A. Waterman pens? A. What I mean by that is where the A. A. Waerman was confused with the Ideal pens.

XQ36. And those people that brought them in called them Waterman's pens? A. They called them Waterman's pens.

XQ37. Then they called the A. A. Waterman pen the Water- 1041
man pen, just as those who had L. E. Waterman's pens called them Waterman's pens? A. Yes, they did.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ38. And these people that had A. A. Waterman pens called them Waterman's pens because they thought they were of the L. E. Waterman Company make, or they thought they were Waterman's Ideal Fountain Pens? A. The way I would answer that would be this. I have had my sales people, that were under me, come to and say, "Mr. Chaffee, here is a pen

that has been bought as a Waterman pen. The lady wants it exchanged." Of course we guarantee any Waterman pen that we sell to give satisfaction. We, of course cannot guarantee it against breaking; any one can break a pen, but they buy it as a pen that they had seen advertised or known as a Waterman pen and a great many times have been very indignant because we would tell them they did not have the Waterman pen that they thought they had; consequently we would have to return it to them without fixing it, and sometimes we would get it fixed for them if they were a customer of the house, where we could not very well refuse to fix it for them.

1043 RDQ39. Did you ever know anybody to ask for a Waterman pen wishing to secure an A. A. Waterman pen? A. I have no recollection of any one asking for an A. A. Waterman pen.

RDQ40. Did you ever know of anybody asking for a Waterman pen expecting to get an A. A. Waterman pen? A. Not to my knowledge.

RDQ41. In every case where a Waterman pen was asked for, as far as you were able to discover they wanted a Waterman's Ideal Fountain Pen? A. That is what I think is generally understood by a customer when they ask for a Waterman pen, that they want a Waterman Ideal pen.

RDQ42. It is a fact within your knowledge, I understand from your cross-examination, that there is a confusion in the trade by the use of the name of A. A. Waterman & Co. on
1044 fountain pens which are not of the L. E. Waterman make? A. Yes, I know that there has been such confusion.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ43. Did you, generally speaking, refuse to repair any pens that bore the name of A. A. Waterman & Co.? A. Why, no, not as a rule. The concerns that I have been with would usually take—excepting in some very special instances—they would take any make of a fountain pen and have it repaired. Of course the customer would have to pay for the repair.

1045

RXQ44. You don't know what was in the mind of any person who owned an A. A. Waterman pen—what was in their mind when they purchased? A. Certainly, I could not tell what was in their minds.

RXQ45. And when they appeared to you to be indignant, was it not from the fact that you refused to repair the pen? A. Why no; they were indignant because they were told that they had not got the Waterman pen that they thought they had, and they have even gone so far as, in one instance, but a very few months ago, to go to the head of the firm because they thought the department heads and sales people did not know their business.

1046

RXQ46. In other words, they believed that their pens were Waterman pens? A. They did.

RXQ47. And they designated them as such? A. They did.

RXQ48. Then is it not true that generally speaking if a man owns an A. A. Waterman pen he calls it a Waterman pen, and if he owns an L. E. Waterman pen he calls it a Waterman pen? A. Naturally if a man buys a pen that is represented to him as a Waterman pen, and it has got the name Waterman on it, he believes that he has got a Waterman pen.

RXQ49. And that belief is founded upon the mere fact that there is "A. A. Waterman" on the barrel, is not that so? A. And it was sold to him as a Waterman pen.

RXQ50. Has any of your concerns ever sold A. A. Waterman pens at all? A. No, they did not.

1047

RXQ51. Then how do you know how any of these pens were sold to the people who owned them? A. I know from hearsay, from people, concerns, that have handled them, and they have been unsatisfactory, they have had so much dissatisfaction in handling other pens, there has been so much confusion, they have had so many brought back that were unsatisfactory, the customers thinking that they were the Ideal pen which is advertised.

RXQ52. Do you mean to say that any one of these concerns that you have been connected with have had any large

1048 *Arthur N. Chaffee*

number of A. A. Waterman pens returned? A. I could safely say that the three concerns that I have been with in the length of time that I have been with them have had quite a good many.

RXQ53. How many would you call quite a good many? A. I could not say.

RXQ54. You have no idea at all? A. Not in figures, no.

RXQ55. It might be a dozen? A. It might be a dozen, it might be a hundred and it might be two hundred and it might be a thousand.

RXQ56. You have no idea whether it was one dozen or one thousand? A. No, I have no idea.

1049 RXQ57. In other words you have no idea at all? A. But I do know we have had a great many returned and a great deal of dissatisfaction and lots of complaints from customers that did return them because they did not have what they thought they had.

RXQ58. They did not return them to you, did they—because you had not sold them? A. They did, for this reason: a Waterman fountain pen is guaranteed to any one that buys it to give satisfaction, and any one that buys one can return it to any dealer that sells Waterman pens and they will either repair it, exchange it, or send it to the company and get it repaired, or exchanged for the customer, if they do not want to do it themselves.

1050 RXQ59. Don't you know that a person who buys an A. A. Waterman pen, if there is anything wrong about it, any dealer who deals in that pen, or any one else, can send it to the factory and have it repaired? A. I don't know that. I have had no dealings with them.

RXQ60. In other words you do not know anything about the A. A. Waterman people? A. All I know about them is simply hearsay, what I have heard about them in the trade, through pens that have been brought in there by people.

RXQ61. But of course there are hundreds of L. E. Waterman pens brought in to one A. A. Waterman pen, are there not? A. That I cannot say.

RXQ62. You do not sell anything but L. E. Waterman pens? A. No, but we repair any pens.

RXQ63. You cannot give any figures whatever as to the proportion of L. E. Waterman pens and A. A. Waterman pens that come in for repair? A. No, I cannot.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ64. These people that were indignant because you told them that they had an A. A. Waterman pen and not a genuine Waterman pen were indignant because you would not make it satisfactory, as they expected you to do if it was a Waterman pen; is not that the fact? A. That is the fact. 1052

RDQ65. And when you say that people told you that they bought a Waterman pen, or that they had a Waterman pen, as the case might be, your knowledge of that is what they told you? A. Yes.

RDQ66. And you found in many instances that as matter of fact the pen that they had was an A. A. Waterman pen and not a genuine Waterman pen? A. Yes.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ67. Did not the dissatisfaction arise from the simple fact that they brought back a guaranteed pen to be repaired to the wrong shop? A. No. 1053

RXQ68. Thinking that yours was an A. A. Waterman shop, where you sold that kind of pen? A. No.

RXQ69. Can you give the words of any particular man, or name any particular person that ever brought one pen back that was unsatisfactory? A. I cannot call any person by name, but I can remember distinctly several customers saying they did not know there was but one Waterman pen made.

RXQ70. How many of those can you remember in seventeen years? A. I don't know how many, but I can say that there were quite a good number.

1054 *H. Lee Mason, Jr.*

RXQ71. You cannot say that there were a dozen in seventeen years, can you? A. I cannot say anything about the quantity.

Signature waived.

Adjourned subject to notice.

UNITED STATES CIRCUIT COURT,

1055 SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.

Testimony taken on behalf of the plaintiff for final hearing before William T. Lindsey, Esquire, United States Commissioner, at his office, Room 309, Post Office Building, in the City of
1056 Pittsburgh and State of Pennsylvania, on the 21st day of March, A. D. 1911, beginning at 10:30 o'clock in the forenoon, pursuant to the notice hereto annexed.

Appearances:

Samuel S. Watson, Esquire, for the plaintiff.
Alexander S. Bacon, Esquire, for the defendant.

Mr. H. LEE MASON, JR., who resides in Pittsburgh, in Pennsylvania, a witness produced on behalf of the plaintiff, being duly sworn, deposes and states as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, place of residence and occupation? A. H. Lee Mason, Jr., Pittsburgh, a member of the firm of J. R. Weldin & Company, stationers.

Q2. Where is their place of business? A. 429-431 Wood Street, Pittsburgh.

Q3. How long have you been in the stationery business, Mr. Mason? A. A little over twenty years.

Q4. And during what period of time have you handled and sold fountain pens? A. All of that time.

Q5. What makes of fountain pens during this period have you handled and sold? A. Principally the L. E. Waterman pen and the Paul E. Wirt pen.

Q6. Have you become as familiar with the fountain pens on the market as a merchant usually is? A. Yes, sir.

Q7. How long have you been dealing in Waterman's Ideal Fountain Pens? A. Since before I went into the business, that is, the firm.

Q8. Personally how long have you handled these Waterman Ideal Fountain Pens? A. Twenty years and a half.

Q9. By what names do your customers ask for Waterman's Ideal Fountain Pens? A. The Waterman Fountain pen and Waterman pen, very rarely using the "Ideal."

Q10. How long has that been the case? A. During all my knowledge.

Q11. All the time you have been handling these goods, Mr. Mason? A. Yes, sir.

Q12. And what is the name that comes to your knowledge that these goods are usually called for and referred to by the trade? A. You mean the technical name?

Q13. The name that these goods are usually spoken of by the trade? A. They are simply spoken of as the Waterman pens and the Waterman fountain pens.

1060 *H. Lee Mason, Jr.*

Q14. How long has that been a fact? A. During the twenty years of my experience.

Q15. As far as the matter has come to your personal knowledge, have the Waterman Ideal Fountain pens proved satisfactory to your customers? A. Very.

Q16. What is the reputation among the trade as to the quality of Waterman's Ideal Fountain pens as far as it has come to your knowledge? A. The very best.

Q17. The very best? A. Yes, sir.

CROSS-EXAMINATION by Mr. Bacon:

1061

XQ18. How long have you been selling the "Ideal" pen, Mr. Mason? A. Twenty years and a half.

XQ19. And the other pen that your firm sells is the "Work"? A. The Wirt.

XQ20. How long have you been selling that? A. The same time.

XQ21. That is a cheaper pen? A. Yes, sir.

XQ22. You don't sell many other pens? A. Very few.

XQ23. These are your two leading makes? A. The Waterman is the leading make. We simply have the other in reserve.

XQ24. You never sold the "Modern" pen, manufactured by the A. A. Waterman Company? A. No, sir.

1062 XQ25. Never sold any of their goods? A. No, sir.

XQ26. You have known of their goods being sold in town, have you not? A. Yes, sir.

XQ27. For how long? A. To my knowledge for four or five years.

XQ28. Have you not known of them being sold here for twelve or thirteen years? A. I have not known that, no.

XQ29. You do not know anything about the A. A. Waterman fountain pen? A. No, sir.

The signature of the witness is waived by counsel.

MR. JOHN ALBERT COOPER, who resides in Avalon Borough, Allegheny County, Pennsylvania, a witness produced on behalf of the plaintiff, being duly sworn, deposes as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, place of residence and occupation? A. John Albert Cooper, Avalon Borough, Allegheny County, Pennsylvania, head salesman for William G. Johnson & Company.

Q2. What is the business in which you are engaged, Mr. Cooper? A. Selling stationery.

Q3. How long have you been in the stationery business? A. I have been in the stationery business twenty-three years, or twenty-four years. 1064

Q4. Where is your place of business now? A. William G. Johnson & Company, Penn Avenue and Ninth Street, Pittsburgh.

Q5. How long have you been with William G. Johnson & Company? A. Sixteen years.

Q6. Does William G. Johnson & Company handle fountain pens, Mr. Cooper? A. Yes, sir.

Q7. How long have you been in any business or connected with any business that handled and sold fountain pens? A. Twenty-three or twenty-four years.

Q8. During that period of time, what fountain pens have you handled and sold? A. I handled first the Wirt—that was the old original; the Weidlich; the Holland; there is a few other odd pens that I can't recall the names, but those are the principal makes; and the Waterman. 1065

Q9. How long have you handled the Waterman Ideal Fountain pen? A. About twelve years, I should judge; that is my recollection, twelve years.

Q10. Do you come into constant contact with the customers that are purchasing fountain pens? A. Yes, sir.

Q11. By what names do these customers ask for Waterman's Ideal Fountain pen? A. As a rule, it is the Waterman or the Waterman Fountain pen.

1066 *John Albert Cooper*

Q12. How long has that been a fact? A. Always, in my experience.

Q13. What is the name by which Waterman's Ideal Fountain pens are generally known to the trade as far as it has come to your knowledge? A. The Waterman pen or Waterman Ideal pen.

Q14. In your experience, as far as the matter has come to your personal knowledge, have the Waterman Ideal fountain pens proved satisfactory to your customers, Mr. Cooper? A. Very much so.

Q15. What is the reputation of the Waterman fountain pen as to quality among the trade? A. It has the highest reputa-
1067 tion of any fountain pen that I know of.

Q16. How long has that been a fact? A. Practically all the time that I have been handling the pen.

Q17. Have you ever sold and handled the pen marked A. A. Waterman & Company? A. No, sir.

Q18. Have any evidences of confusion between Waterman's Ideal Fountain pen and those marked A. A. Waterman & Company, come to your notice? A. Yes, sir; in one or two instances. I couldn't recall the date or the circumstances except that persons have brought the A. A. Waterman pen in for repairs, or for some attention.

Q19. How did they show that they were confused? A. By the fact of the pen being marked "Waterman." It was stamped
1068 "Waterman," and in some cases, my idea from the conversation with the customer, was that they thought there was only one Waterman pen.

Q20. Which one did they think they had? A. From the fact that they came to the dealer in the Ideal pen, they thought they had the L. E. Waterman pen.

CROSS-EXAMINATION by Mr. Bacon:

XQ21. They bring in all sorts of pens? A. Yes, sir.

XQ22. Nothing strange that an A. A. Waterman should be brought in any more than a Wirt? A. No, sir.

XQ23. You never have sold any of the A. A. Waterman pens at all? A. No, sir.

XQ24. You know nothing about it except that an occasional pen comes in for repairs? A. Yes, sir.

XQ25. The great number of pens that come in for repairs are the L. E. Waterman? A. Yes, sir.

XQ26. If a man gets an A. A. Waterman pen, he is as apt to call it a "Waterman" as not? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ27. These people think so for what reason? A. From the fact that they are stamped "Waterman." 1070

RDQ28. Did they think they had the Waterman Ideal fountain pen, did you get that impression? A. In most cases, they did.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ29. They are all stamped A. A. Waterman? A. Yes, sir.

RXQ30. How would you know that they thought they had an "Ideal" pen? A. From the fact that they brought it to the dealer in "Ideal" pens, saying that they had a Waterman pen.

RXQ31. That is the only thing that made you think they thought it was an Ideal pen? A. Yes, sir. 1071

The signature of the witness is waived by counsel.

MR. EPHRAIM M. JOEL, who resides in Pittsburgh, Pennsylvania, a witness called on behalf of the plaintiff, being first duly sworn, deposes and states as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, place of residence and occupation? A. Ephraim M. Joel, 7309 Hamilton Avenue, Pittsburgh, Pennsylvania, salesman with William G. Johnson & Company.

1072 *Ephraim M. Joel*

Q2. With what concern are you connected? A. With William G. Johnson & Company.

Q3. Where is their place of business? A. Ninth and Penn Avenue, Pittsburgh.

Q4. Their business is what? A. Commercial stationery.

Q5. How long have you been in the stationery business, Mr. Joel? A. Ten years.

Q6. Have you come into contact with the customers who buy fountain pens at your store? A. Yes, sir.

Q7. What makes of fountain pens have you sold during the time you have been connected with the stationery business? A.
1073 The Waterman Ideal Fountain pen, and the Eagle pen and the Paul E. Wirt.

Q8. How long have you sold Waterman's Ideal Fountain pens, Mr. Joel? A. Eight years.

Q9. By what names do the customers call for Waterman's Ideal Fountain pens? A. Mostly as Waterman's pens or Waterman's Ideal.

Q10. How long has that been a fact? A. Since I have handled the Waterman pen.

Q11. As far as the matter has come to your personal knowledge, have the Waterman Ideal Fountain pens proven satisfactory to your customers? A. Thoroughly satisfactory.

Q12. By what name was the Waterman Ideal Fountain pen known generally to the trade within your own personal knowl-
1074 edge? A. Waterman's pen and Waterman's Ideal.

Q13. How long has that been a fact? A. As long as I have been handling fountain pens or been connected with them.

Q14. Have you ever handled or sold the fountain pen marked "A. A. Waterman & Company"? A. No, sir; I never have, only in repair work.

Q15. Have any evidences come to your personal attention of confusion between the Waterman Ideal Fountain pen and those marked A. A. Waterman & Company? A. Occasionally I have had the people bring the pens in, and I have talked with people who had the A. A. Waterman pen who were under the

impression that there was only one Waterman pen and they seemed to think they had the one Waterman pen.

Q16. Which one of the Waterman pens did they refer to, Mr. Joel? A. They seemed to know it as the L. E. Waterman or the Waterman Ideal. They seemed to have a knowledge of that pen only.

CROSS-EXAMINATION by Mr. Bacon:

XQ17. You repair all sorts of pens? A. Yes, sir.

XQ18. There is nothing unusual in an A. A. Waterman pen coming in to be repaired? A. No, sir. 1076

XQ19. You have repaired very few? A. Yes, sir.

XQ20. Mostly L. E. Waterman pens? A. Yes, sir.

XQ21. If a person came in with an A. A. Waterman, they thought that was a Waterman pen? A. Yes, sir.

XQ22. They perhaps did not know anything about the L. E. Waterman pen? A. They only knew one Waterman pen.

XQ23. That was their own? A. Yes, sir.

XQ24. There are a great many people that know the A. A. Waterman pen, but don't know any other pen, just as there are many who know the L. E. Waterman and no other? A. Well, they understand it as the "Waterman" pen, whether it is an L. E. Waterman or an A. A. Waterman pen.

XQ25. That is universal? A. Yes, sir; to the best of my knowledge. 1077

XQ26. Is the A. A. Waterman pen sold in Pittsburgh? A. Yes, sir; I believe it is.

XQ27. How long has it been sold? A. I don't know.

XQ28. Do you know how many years? A. It is not generally handled in Pittsburgh, to the best of my knowledge. It is being sold in Pittsburgh now, I believe.

XQ29. You don't know for how many years it has been sold, do you? A. No, sir.

XQ30. Your knowledge of the A. A. Waterman pen is exceedingly slight? A. Yes, sir.

1078 *Ephraim M. Joel*

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ31. Where in Pittsburgh, at the present time, is the A. A. Waterman pen sold? A. In the drug store at the corner of Seventh and Liberty, they are selling them now, advertising them.

RDQ32. Have you seen their display or advertisement of these pens? A. Yes, sir.

RDQ33. When did you see them? A. Yesterday.

RDQ34. What was the display? A. A board filled with pens, with the prices.

1079 RDQ35. What were the prices? A. They were advertising a two dollar and a half and three dollar pen for ninety-five cents.

RDQ36. What kind of pens were they? A. They were assorted, mounted pens and plain pens.

RDQ37. What do you mean by "mounted" pens? A. One with a silver mounting.

RDQ38. Any pen displayed was advertised for ninety-five cents? A. Yes, sir.

RDQ39. When people come to you with an A. A. Waterman pen and call it a Waterman pen, do you know whether they did so because they thought they had a Waterman Ideal Fountain pen? A. To the best of my knowledge, they were under the impression that they had the only Waterman pen. The Waterman pen is generally known as the Ideal.

1080 RDQ40. From their conversation, you understood that that was what they thought, that they had a Waterman Ideal Fountain pen? A. Yes, sir.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ41. Where they were displaying these ninety-five cent pens, you did not look to see whether they were the A. A. Waterman pens? A. No, sir.

RXQ42. You say that they were marked three and a half? A. They ran from two and a half up.

RXQ43. You do not mean to say that they were selling a three dollar and a half pen for ninety-five cents, Mr. Joel? A. That is what their sign read.

RXQ44. Did they mean any pen in any certain subdivision of the window? A. I don't know.

RXQ45. You do not believe that they were selling a three dollar and a half pen for ninety-five cents? A. I don't see how they could.

RXQ46. You just glanced at the window and read the sign, did you not? A. I just glanced at the sign which said "A. A. Waterman." It said from two and a half to four and a half for ninety-five cents.

1082

RXQ47. You are not prepared to say that you could go in there and buy an A. A. Waterman pen for ninety-five cents? A. No, I am not.

Signature of the witness is waived by counsel.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

1083

L. E. WATERMAN COMPANY,
Plaintiff.

vs.

MODERN PEN COMPANY,
Defendant.

Testimony taken on behalf of plaintiff for final hearing, before Sidney W. Petrie, Clerk of the United States District Court for the Western District of New York, at his office in the main post office building, in the City of Buffalo, State of New York,

1084 *Du Monte A. Whiting*

on the 20th day of March, 1911, at 10 o'clock in the forenoon, pursuant to the notice annexed hereto.

Appearances:

Samuel S. Watson, for the plaintiff.
Alexander S. Bacon, for the defendant.

DU MONTE A. WHITING, called as a witness for plaintiff, and duly sworn, testified as follows:

Direct-examination by Mr. Watson:

1085 Q1. State your name, place of residence and occupation, please? A. DuMonte A. Whiting, 149 St. James Place, Buffalo, Vosburgh & Whiting, stationers.

Q2. Where is their place of business? A. Swan and Washington Streets, Buffalo.

Q3. How long have you been in the stationery business? A. 28 years.

Q4. And how long have you handled and sold fountain pens? A. Well, during the whole of that period, I believe. I think they just came on the market about the time we started.

Q5. During that period have you been familiar, as a merchant usually is, with the fountain pens which have been on the market? A. Yes, I have been familiar with nearly everything that has been offered to the trade.

1086 Q6. Your familiarity comes from having them presented to you by travelling salesmen? Is that so? A. That is true.

Q7. During this period what makes of fountain pens have you handled and sold? A. Well, let's see; the Wirt pen was the first, and we have sold the Parker, the L. E. Waterman pen and, oh, perhaps a dozen different makes, more or less, known to the trade.

Q8. How long have you sold Waterman's Ideal Fountain Pen? A. I should say 12 years or more.

Q9. And are you still selling that pen? A. We are.

Q10. By what name is the Waterman Ideal Fountain pen, from your personal experience, asked for by your customers?

A. Usually they simply ask for the Waterman Fountain pen. Sometimes it is "L. E. Waterman;" sometimes "Waterman's Ideal," but the usual expression is "Waterman's Fountain Pen."

Q11. How long has that been the case? A. Ever since we have handled them.

Q12. In your experience, as made known to you by the trade, have you found that Waterman's Ideal Fountain pen has proved generally satisfactory to your customers? A. The Waterman pen we have sold more of them than any other pen we have handled, and so far as I know personally, it has given the best of satisfaction, and is recognized as the standard fountain pen.

1088

Q13. Is that the opinion of the trade so far as it has come to your personal knowledge? A. It is, universal.

CROSS-EXAMINATION by Mr. Bacon:

XQ14. Have you ever handled the A. A. Waterman goods? A. We have not. They have been offered to us at various times. I know Mr. A. A. Waterman personally, and he has several times tried to interest us in the line, but we never have seen fit to take hold of it.

XQ15. How long have you known Mr. A. A. Waterman? A. Oh, I should say—let's see; 8 or 10 years I should say.

XQ16. And when you first knew him he was selling A. A. Waterman pens, was he not? A. He was.

1089

XQ17. And openly to the trade? A. Yes.

XQ18. And was advertising them as such? A. Well, simply through his own personal efforts. I do not know that I ever saw any advertising matter of the A. A. Waterman pen when he was handling them.

be 10. Perhaps I will qualify that and say eight years.

XQ19. That is 10 or 12 years ago? A. Well, it may not

XQ20. Well, then, he was a member of the firm of A. A. Waterman & Co., was he not? A. I so understood.

XQ21. And with headquarters in Boston? A. I have forgotten whether it was in Boston or New York.

1090 *Du Monte A. Whiting*

XQ22. And he was openly selling and advertising A. A Waterman & Co. fountain pens at that time, was he not?

Mr. Watson: I object to that as already answered by the witness.

A. Yes, I should say so.

XQ23. Are A. A. Waterman & Company fountain pens sold in Buffalo largely? A. I don't think so. Of my own knowledge I don't know of anyone handling them.

XQ24. Then you do not know anybody that owns one? A. I have been told that one of the department stores are handling them. In fact my information came from a customer who had
1091 bought one there and came to us to have it repaired, and happened to come to me personally. I was on the floor at the time.

XQ25. And you repaired it for him? A. No, we did not. We don't repair any pens except those that we sell ourselves; that is, the makes that we sell ourselves.

XQ26. Well, he knew that he was getting a Waterman pen, did he not? A. He said at the time he supposed he was getting the genuine Waterman pen. He thought it was very strange that we wouldn't repair it. I simply told him that he better go to Adam, Meldrum & Anderson, where he bought it, and they would perhaps repair it for him.

XQ27. He called his pen a Waterman pen just as you called yours a Waterman pen? A. Yes, he called his pen a Waterman
1092 pen.

XQ28. People generally do that, do they not, if they have any Waterman pen they call it "Waterman"? A. Yes, I think they would call it a Waterman pen.

Mr. Bacon: That is all.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ24. They called it a Waterman pen because they thought it was a genuine Waterman's Ideal Fountain Pen, isn't that so?

Objected to.

Question withdrawn.

RDQ30. They called this pen because they told you they thought it was a genuine Waterman fountain pen made by the L. E. Waterman Company, did they not?

Mr. Bacon: I object to that because the witness has already sworn that he only knew the one instance.

Question repeated.

A. They did.

RDQ31. In other instances of people coming to you with an A. A. Waterman pen, to which you referred in your cross-examination, where they called the pen a Waterman pen, did they 1094
give you to understand that they thought they had a genuine Waterman's Ideal Fountain Pen? A. So far as I remember, in every instance that has come to my personal knowledge, that is a fact.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ32. Did they say that they thought they had an Ideal pen when they had an A. A. Waterman pen? A. I don't know that they used the word "Ideal." They used the word "Genuine Waterman."

RXQ33. But they did not use the initials "L. E." or the word "Ideal"? A. I would not swear that they did. 1095

RXQ34. And if it was made by A. A. Waterman & Co., was it not as much a genuine Waterman pen as though it was made by L. E. Waterman Company? A. Not in the opinion of the trade. Not in my opinion.

By Mr. Watson:

RXQ35. A genuine Waterman fountain pen means in the trade Waterman's Ideal Fountain Pen, does it not? A. No question about it. Yes, sir.

1096 *Du Monte A. Whiting*

By Mr. Bacon:

RXQ36. Is it not a fact that for at least 12 or 13 years A. A. Waterman pens have been sold on the market openly as such? A. My knowledge does not go back as far as that, and I have not had the A. A. Waterman pen offered me in years and not since Mr. A. A. Waterman was through here himself, which I should say was before our fire, and that was some five or six years ago; I don't think he has been here since.

RXQ37. What is your answer to my question, if you confine it to the time when you had Waterman's pens offered to you? A. Not to exceed 8 years ago.

1097 RXQ38. (Question repeated.) A. Oh, I should say that as far as my personal knowledge goes it was not to exceed 8 years that such has been the case.

By Mr. Watson:

RXQ39. So far as your personal knowledge goes of the A. A. Waterman pen being sold, that began about eight years ago? A. I should put it that period.

RXQ40. As far as your personal knowledge goes, these pens have not been offered to you in the last five or six years? A. That is true.

RXQ41. And it was only just for two or three years that you knew anything about the sale of A. A. Waterman's pens? A.

1098 Yes, sir.

By Mr. Bacon:

RXQ42. But they have actually been sold in Buffalo right along for the last twelve or thirteen years, have they not? A. That I don't know. Just as I stated before, I don't know personally of their being sold here except as I was told by customers who had been in the store.

RXQ43. And they told you that they were being sold openly? A. Well they told me that they bought this pen in this instance, this last instance which I speak of. And by the way, I would not confine that to one instance. There have been a number of

such instances; sometimes a salesman coming to me and asking if we would repair an A. A. Waterman pen, and in that way I have known of their being brought into the store, but of course I could not tell whether they had been bought in Buffalo or elsewhere.

RXQ44. There was a representative of the L. E. Waterman Company to see you about the first of March and asked you about taking this testimony? A. Why I don't know whether he was—he was a representative of the L. E. Waterman Company.

RXQ45. He was a lawyer? A. So I understood.

RXQ46. Was it Mr. Raymond? A. Well I don't remember the name.

1100

RXQ47. It was not Mr. Watson? A. No, sir.

RXQ48. He was there and told you what evidence he wanted to produce, is that right? A. No. He simply asked me if I would be willing to—he said perhaps it would be necessary to take my testimony later on in the spring, and asked me if I would be willing to testify as to my opinion as to the genuine Waterman pen, and whether the pen produced by the A. A. Waterman Company was in different instances understood as the genuine Waterman pen made by the L. E. Waterman Company.

RXQ49. He called it the genuine Waterman pen, did he? A. I don't know that he did at that time. But the trade universally—

RXQ50. I am asking you now what this representative of L. E. Waterman Company said to you? A. As I stated before, he simply asked me—I understood at that time that he was going to have someone come to the office and take my affidavit as to our selling the L. E. Waterman pen, and my experience with the A. A. Waterman, but he did not go into details. He was not in the store probably five minutes.

1101

RXQ51. Then you have not had any experience with the A. A. Waterman pen at all, have you? A. Not in selling.

1102 *Willis P. Whiting*

WILLIS P. WHITING, called as a witness for plaintiff, and duly sworn, on direct-examination by Mr. Watson, testified as follows:

Q1. Please state your name, place of residence and occupation? A. Willis P. Whiting. 112 Norwood Avenue, Buffalo, N. Y. Business is stationers and printers.

Q2. Where is your place of business? A. 274 Main Street, Buffalo.

Q3. How long have you been in the stationery business? A. 27 years.

Q4. How long have you handled and sold fountain pens? A.
1103 Nearly as long as that, I think. I don't know. Yes, I guess we have sold fountain pens that time.

Q5. During this period, have you, as a merchant generally is, been familiar with the fountain pens on the market? A. Yes, sir.

Q6. During this period that you have been handling fountain

(Signature of witness is waived.)

pens, what makes of fountain pens have you sold? A. Oh, to go way back do you mean?

Q7. Yes. Give us a rough idea? A. We have sold the Beamel's, Waterman's, Aikin-Lambert & Company's the Diamond, Conklin's Self-filler.

Q8. How long have you sold Waterman's Ideal Fountain
1104 Pens? A. About fifteen years.

Q9. Are you still selling them? A. We are still selling them.

Q10. By what name, as far as this matter comes to your personal knowledge, do your customers call for, ask for Waterman's Ideal Fountain Pen? A. What do they ask for?

Q11. Yes? A. Why, "Waterman's pens," and "Waterman's fountain pen," and—

Q12. How long has that been the fact? A. How long has it?

Q13. Yes? A. Oh, I guess ever since I have sold them.

Q14. As far as it has come to your personal knowledge, have Waterman's Ideal Fountain Pens proved satisfactory to your customers? A. Yes, sir.

Q15. Are these pens generally known by the trade as the Waterman pen?

Mr. Bacon: I object to that as leading.

Question withdrawn.

Q16. By what name are these Waterman Ideal Fountain Pens known and spoken of by the trade generally, as far as it has come to your attention? A. Why, I think as "Waterman Fountain Pen."

CROSS-EXAMINATION by Mr. Bacon:

XQ17. Have you ever handled the A. A. Waterman fountain pen? A. No, sir.

XQ18. Never had anything to do with it? A. Well, only as 1106
far as they were soliciting our business, that is all.

XQ19. Who solicited your business? A. A. A. Waterman did.

XQ20. How long ago? A. It must have been about 14 years.

XQ21. 14 years ago? A. 13 or 14, yes, sir.

XQ22. For how long a period was he soliciting your business that you remember; how many years? A. Do you mean Waterman personally?

XQ23. A. A. Waterman personally? A. Probably a year.

XQ24. And he was then selling the A. A. Waterman pen, was he not? A. Yes, sir.

XQ25. With headquarters in Boston? A. I don't think so at that time. I think they were in New York. I don't know. 1107
I couldn't tell whether it was New York or Boston.

XQ26. And did he call his pen the Waterman pen too? A. Well, he wanted to sell it as a Waterman pen, yes.

XQ27. Do the people who carry A. A. Waterman pens usually speak of them as the Waterman pen? A. Do they usually?

XQ28. Yes? A. Well, I don't know how I could answer that. I don't know.

Mr. Bacon: That is all.

(Signature of witness is waived.)

Mr. Bacon: Wait a minute, Mr. Whiting.

XQ29. Was there a representative of—

Mr. Watson: I object to the further examination of the witness after the examination is closed.

XQ30. Was there a representative of the L. E. Waterman Company to see you about the 1st of March this year? A. Well, there seems to be an objection there.

Mr. Watson: Well, you answer just the same.
The Examiner: You have to answer.

A. A representative? Well, we have a representative that calls on us regularly.

1109 XQ31. Did Mr. Raymond of the firm of Watson & Raymond a lawyer for the L. E. Waterman Company, call upon you about the 1st of March and speak to you with reference to giving this testimony? A. I think about along in March, yes; I don't know when it was.

XQ32. Well, what did he say to you? A. What did he say to me?

XQ33. Yes. A. Well, I can't recall just exactly what he said to me.

XQ34. He told you that he was looking for testimony, did he not? A. Why, I don't remember whether he said he was looking. I suppose he was of course.

XQ35. He told you what kind of testimony he wanted you
1110 to give? A. No.

XQ36. He told you the subject-matter of it, did he not? A. He didn't tell me anything about but what I had known for a number of years.

XQ37. Well, what did he tell you that you had known? A. Why, he didn't tell me he wanted any testimony about anything except with regard to the Waterman fountain pens, and my experience with the Waterman fountain pen, that is all.

XQ38. And you knew what questions were going to be asked you here today, did you not? A. No.

XQ39. Substantially? A. I might say I would; yes, sir. I naturally would; yes, sir.

XQ40. He told you about what you were going to be examined on? A. No, he did not.

XQ41. He told you that they were going to ask you about the Waterman pen being called the genuine Waterman pens, did he not? A. No.

XQ42. What did he say along that line? A. Well, I'll tell you, the most that Mr. Raymond had to say to me was about—why, about conflicting trade and about a concern up the street that had been selling the A. A. Waterman pens which had interfered with our business.

XQ43. And he wanted you to give testimony? A. About that? 1112

XQ44. No. He said that he wanted to call you to give testimony in this suit, did he not? A. Oh, yes.

XQ45. What did he say about that? A. Well, that is all he said substantially. He didn't—

XQ46. Did he not tell you what subject you were to be examined upon? A. No, sir.

XQ47. None whatever? A. Why, as I tell you, in reference to the Adam, Meldrum & Anderson Co.—or the concern up the street here that were—I think I brought that up myself, about their interfering with our business.

XQ48. Did he not state to you that you would be called upon to testify along certain lines? A. What do you mean, "along certain lines"? 1113

XQ49. You are an educated gentleman, Mr. Whiting; you understand English reasonably well? A. Yes, but you say, "along certain lines."

XQ50. When I say certain lines, I mean of course any specific lines. A. I don't know that he had any specific lines; no, sir.

XQ51. Well, now, did he not tell you that you were going to be examined along the line just about as Mr. Watson has examined you this morning? A. No, sir; he asked me about the same questions that Mr. Watson has asked me. That is about all.

1114 *Sidney J. Burgoyne*

XQ52. Yes. He asked you the same questions? A. Well, h
asked me what information I knew.

XQ53. And you told him the answers then? A. Yes, I tol
him what I knew about it, of course.

XQ54. And he suggested the answers to you, did he not? A
He did not.

(Signature of witness waived at page 15.)

1115 UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY, Plaintiff, against MODERN PEN COMPANY, Defendant.	In Equity.

1116 Testimony taken *de bene esse*, under Sections 863 and 864 of the Revised Statutes as amended, before William W. Craig United States commissioner, in the Main Post Office Building in the City of Philadelphia, State of Pennsylvania, on the third day of April, 1911, at 2:30 o'clock in the afternoon, pursuant to notice hereto annexed.

Appearances:

Samuel S. Watson, Esq., for Plaintiff.
Morton Stein, Esq., for Defendant.

SIDNEY J. BURGOYNE, of full age, a witness produced on behalf of the plaintiff, being duly sworn, deposes as follows:

By Mr. Watson:

Q1. Please state your name, age, residence and occupation? A. Sidney J. Burgoyne; age 35 years; residence Oak Lane Pennsylvania; occupation stationer.

Q2. How long have you been in the stationery business? A. Eighteen years.

Q3. How long have you handled fountain pens? A. All this time.

Q4. What kind of fountain pens have you handled? A. Waterman's Ideal, a few Moore's and a cheap grade pen, which is below their minimum. 1118

Q5. How long have you handled Waterman's Ideal Fountain Pen? A. Sixteen years.

Q6. By what name are these pens usually called for by your customers? A. Waterman.

Q7. How long has that been a fact? A. Ever since I have sold them.

Q8. By what name, as far as the matter has come to your attention, are those fountain pens known in the trade generally? A. Waterman pens.

Q9. How long has that been a fact, as far as you have been able to observe? A. I never knew of anything else. Of course they have a trade-mark which is well known to the trade. 1119

Q10. What is that trade-mark? A. The Ideal, but as far as the general public is concerned they do not know anything about that.

Q11. Has the Waterman Ideal Fountain Pen, so far as the matter has come to your knowledge, proved satisfactory to your customers?

Mr. Stein: Objected to as immaterial, incompetent and irrelevant.

A. Entirely.

Q12. What is the reputation for quality and grade in the trade, as far as the matter has come to your attention, of the Waterman Ideal Fountain Pens?

Mr. Stein: Objected to upon the same ground; and upon the further ground that no proper foundation has been laid.

A. We have always considered that having their pens in the store was just as good as if you had the money; that is, if there is anything wrong with them at any time you can have your money back.

1121 Mr. Stein: I move to strike out the answer. Notice is given that a motion will be made to strike out the answer, as irresponsive.

By Mr. Watson:

Q13. What is the reputation among the trade, for grade and quality, of the Waterman Ideal Fountain Pen, good or bad? A. It is considered the standard.

Q14. Do you mean by that that it is considered the best pen on the market? A. Yes, sir.

Q15. How long has that been a fact, as far as you have been informed? A. It has always been considered the standard pen.

Q16. Ever since you have been in business? A. Yes, sir.

1122 *CROSS-EXAMINATION by Mr. Stein:*

XQ17. The few cheap pens below the regular grade, that you spoke of at the first of the examination, were pens manufactured by L. E. Waterman Company? A. No, sir.

XQ18. By whom were they manufactured? A. We used to buy pens from the Franklin Pen Company. We bought some from Akin-Lambert & Company of New York, pens to retail at a dollar.

XQ19. Never bought any from A. A. Waterman & Company? A. No, sir.

XQ20. Or the Modern Pen Company? A. No, sir.

XQ21. Do you know anything about their pens? A. No, sir; I do not know anything about them.

XQ22. You keep in touch rather closely, I presume, with the advertising and other literature regarding fountain pens? A. Yes, sir.

XQ23. When the L. E. Waterman Company advertise these pens it usually advertises the Ideal Pen, does it not? A. They always have their trade-mark in the advertisement.

XQ24. Of the Ideal Pen? A. Yes, sir.

XQ25. So that when the fountain pen ad is spread before the public it contains prominently the words "L. E. Waterman," and "Ideal"? A. I do not agree with you there exactly. The word "Ideal" as far as the trade is concerned is known much more than it is from a public point of view. 1124

XQ26. The public sees the Ad. does it not? A. You take advertising, and people advertise Waterman's pens.

XQ27. Who advertises Waterman's pens? A. When the stationers advertise those pens you can take a great many advertisements, and I question whether you see the word "Ideal" in them. A great many will simply advertise Waterman's pens.

XQ28. Have you ever had anything to do with the A. A. Waterman Company pens? A. No, sir.

XQ29. Do you know anything about them? A. No, sir; only I have always understood that it was a very good thing for another manufacturer to be able to use the name of a man that already had a reputation. 1125

XQ30. Will you please answer my question. Have you ever had anything to do with A. A. Waterman & Company pens? Do you know anything about them? A. No, sir; the only case that ever came to my mind was, when we had a store over here, where a man brought in a pen to get it exchanged. Anybody handling an Ideal Pen is practically a sub-agent of the Waterman Company; that is if I bought a pen in San Francisco, I could take it to John Wanamaker and he would have to fix it for me, or give me a new pen, or exchange it for anything I wanted.

1126 *Sidney J. Burgoyne*

This man came in with a pen and wanted us to exchange it. He had a Waterman pen, but it was not the L. E. Waterman. He was very indignant when we would not exchange it. In that case we could not do anything for him.

XQ31. His was the A. A. Waterman pen? A. Yes, sir.

XQ32. He called his a Waterman pen? A. Yes, sir; he thought he had one of the Waterman Ideal's but he had not.

XQ33. How do you know he thought that? A. Because he said he wanted one.

XQ34. He wanted an Ideal pen? A. Yes, sir.

XQ35. He did not say anything about what pen he wanted. He wanted a Waterman exchanged? A. He wanted a Water-
1127 man pen. That is what he said.

XQ36. Do you know where he bought it? A. No, sir.

XQ37. Whether it was out in California or Michigan or New York or Philadelphia? A. No, sir; I do not know anything about that.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ38. Why have you not carried the A. A. Waterman Company's pens?

Mr. Stein: Objected as immaterial, incompetent and irrelevant.

1128 A. I never thought it was necessary. That question came up in another matter last week at a very prominent stationer's in town here—

Mr. Stein: Confine yourself to the question.

Mr. Watson: Put your objection on the record.

Mr. Stein: I insist that the witness confine himself to the answering of the questions and not volunteering statements.

By Mr. Watson:

RDQ39. You proceed and make your answer as you are so disposed? A. What I was going to mention was a case here of

a man who had a big stock of blank books, and another manufacturer comes along and wants his line put in. The man does not think he can afford to have two lines in. He wants to stick to one house. That is the way we are today. With the guarantee that the Waterman Company always gives its customers we always felt it was practically banking to have their pens. Any time you want to discontinue using them you can always get your money back.

RDQ40. Has the reputation of the Waterman Ideal Fountain Pen had anything to do with your carrying it as part of your stock? A. Their reputation is half the sale of them.

RDQ41. You are connected with the Association of Stationers in this city A. Yes, sir. 1130

RDQ42. In what capacity A. Secretary.

RDQ43. As secretary of that association do you come in frequent contact with the prominent members in the stationery business in Philadelphia? A. Yes, sir.

RDQ44. It is through this source that you learned of the reputation of the Waterman Ideal Fountain Pen among the trade? A. Not necessarily; no, sir.

RDQ45. How did you learn of the reputation of the Waterman pen? A. We had a lecture a few weeks ago on the Waterman pen, so that the boys in town could sort of find out a few things about it, the manufacturing point of it that they did not know of.

RDQ46. How long have you known about the reputation of the Waterman Ideal Fountain Pen? A. Ever since I have handled them. 1131

RDQ47. That reputation came to you from contact with other dealers in the trade? A. Yes, sir.

RE-CROSS EXAMINATION by Mr. Stein:

RXQ48. Is it not a fact that one of the reasons you want to stick to the one line of the L. E. Waterman Company is because of its reputation and liberal advertising propositions? A. No,

1132 *Sidney J. Burgoyne*

sir; they manufacture an article that we feel pretty safe in selling a man. They offer you a good profit, and what more can a man want, when he knows the pen is all right.

RXQ49. Then it is the profit plus the stability of the house? A. And the goods.

RXQ50. That induces you to stick to this particular line of goods, and not to branch out? A. Yes, sir.

RXQ51. You spoke about feeling as though you had bankers behind you in dealing with the L. E. Waterman Company, did you not?

Mr. Watson: Counsel for plaintiff states on the rec-
1133 ord that that is not a fact, and that the record will show it.

A. Yes, sir.

RXQ52. You answer yes? A. I answered that having their goods was like doing banking, that at any time that you had made up your mind you did not want to continue handling them you could always send them back and get your money back. That assurance you have from very few houses in any line.

RXQ53. Can you get that assurance from the A. A. Waterman Company? A. I do not know.

RXQ54. You have the assurance from the L. E. Waterman Company that they will take back all undisposed of goods on demand, and pay you what you paid for them? A. At any time.

1134 RXQ55. Giving you full credit? A. Yes, sir; at any time.

RXQ56. Who gave this lecture on the process of manufacturing the Waterman pen? A. Mr. Seymour.

RXQ57. Connected with the L. E. Waterman Company? A. Yes, sir.

RXQ58. In what position? A. I do not know what position he has.

RXQ59. From the New York office? A. Yes, sir.

RXQ60. Was that lecture any more than the usual demonstration? A. Just an illustrated lecture, that was all.

RXQ61. Showing how that particular pen was manufactured? A. Yes, sir.

RXQ62. Did he state whether they were manufactured by the L. E. Waterman Company, or by other people for L. E. Waterman Company?

Mr. Watson: Counsel for plaintiff objects to all this line of testimony as entirely irrelevant to any issue in this case, and gives notice that he will move at the final hearing to have it all stricken out. Furthermore, counsel for plaintiff has, during many sessions, permitted a lot of irrelevant questions to be asked on the record that are unendurable, and he will make a motion at the final hearing that the cost of taking these extended depositions on matters not pertinent to the issues in this case be taxed 1136 against the defendant.

A. I do not think that question was touched on at all.

By Mr. Stein:

RXQ63. Did he state whether the L. E. Waterman Company manufactured its pens, or merely assembled the parts which they purchased from different people?

Mr. Watson: I enter the same objection.

A. The views simply showed the material going through the course of manufacture.

RXQ64. Did he state they were going through the course of manufacture in the factories of the L. E. Waterman Company? 1137

Mr. Watson enters the same objection.

A. That I could not tell you.

RXQ65. You do not remember that part of the lecture? A. No, sir.

(By agreement of counsel signature of witness waived.)

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant.
} In Equity.

1139 Testimony taken *de bene esse* on behalf of plaintiff for final hearing, under Sections 863 and 864 of the Revised Statutes of the United States and in accordance with the rules and practice of this Court, before A. M. Parkins, a notary public in and for the District of Columbia, at her office, room 516 Washington Loan & Trust Building, Washington, D. C., on Tuesday, April 4, 1911, at 2:30 o'clock in the afternoon, pursuant to notice hereto attached.

Appearances:

Samuel S. Watson, Esq., on behalf of plaintiff.
Morton Stein, Esq., on behalf of defendant.

1140 RALPH S. BAILEY, of lawful age, a witness produced on behalf of plaintiff, being first duly sworn, testified as follows in answer to interrogatories by Mr. Watson:

Q1. Please state your name, residence and occupation? A. Ralph S. Bailey; Washington, D. C.; stationery business.

Q2. How long have you handled and sold fountain pens, Mr. Bailey? A. About fourteen years.

Q3. What kind of fountain pens have you handled and sold during that time? A. Different makes; Waterman's Ideal for the whole fourteen years, and I have handled for a little while a few Sterling pens.

Q4. By what name do your customers come into your store and ask for Waterman's Ideal Fountain Pen? A. They come in and ask for Waterman pens, or Ideal pens, as they are known.

Q5. What is the usual name? A. Waterman.

Q6. How long has that been the fact? A. Ever since I have been selling pens.

Q7. By what name are Waterman's Ideal Fountain Pens usually referred to by the trade, according to your information?

By Mr. Stein: Objected to as incompetent, immaterial and irrelevant, and no foundation therefor laid.

A. Waterman pens.

1142

Q8. And how long has that been the fact, so far as you know? A. As long as I have been handling pens.

Q9. You have heard them spoken of frequently by other dealers, have you? A. By other dealers—yes, sir.

Q10. In your experience with handling Waterman Ideal Fountain Pens have they generally proved satisfactory to your customers, so far as the matter has come to your knowledge?

By Mr. Stein: Objected to as incompetent, immaterial and irrelevant.

A. They have.

CROSS-EXAMINATION by Mr. Stein:

1143

XQ11. Do you handle the pens manufactured by A. A. Waterman & Co.? A. Don't know them at all.

XQ12. Did you ever know that A. A. Waterman & Co. ever manufactured a pen? A. No.

XQ13. Did you ever know that the Modern Pen Company of New York, was selling fountain pens? A. Never heard of it.

XQ14. You have discussed fountain pens very freely with the trade and among the trade? A. Well, in a general way, as they came in and bought the pens.

XQ15. Then when you spoke, Mr. Bailey, of the way in which the Ideal fountain pen was spoken of generally by the trade,

you referred to the trade that came in and bought fountain pens? A. Sure.

XQ16. And that is the only reference you had to the trade? A. Yes.

XQ17. You never heard anybody complain, did you, about the A. A. Waterman & Co. fountain pen? A. I don't know. I never heard of the A. A. Waterman fountain pen.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ18. You have heard the Waterman Ideal Fountain Pens spoken of by other dealers, haven't you? A. I have talked
1145 to other dealers about them in a general way.

RDQ19. By what name did they refer to those pens? A. Waterman's.

RE-CROSS EXAMINATION by Mr. Stein:

RXQ20. Did you ever talk to other dealers about the A. A. Waterman & Co. pen? A. No.

RXQ21. Or pens made or sold by the Modern Pen Co.? A. No, sir.

RXQ22. Did you ever talk to other dealers about any other fountain pen except the L. E. Waterman Ideal pen? A. Oh. I have talked to other dealers about the make of the Sterling
1146 pen.

RXQ23. Any other? A. No other.

RXQ24. And in all of those talks covering, as I understand, a period of fourteen years, you never heard of A. A. Waterman & Co. or the fountain pen bearing that name? A. No, sir.

RE-RE-DIRECT EXAMINATION by Mr. Watson:

RRDQ25. Where is your place of business? A. 814 F Street, Washington, D. C.

RRDQ26. That is one of the principal business streets of Washington? A. Yes, it is.

RRDQ27. And your store is directly opposite the Patent Office, is it not? A. Yes, sir.

RRDQ28. And your store has been in that vicinity ever since you have been selling fountain pens? A. Yes, there and also at 619 Seventh Street.

RRDQ29. That is also opposite the Patent Office isn't it? A. Yes.

RRDQ30. What is the name of the concern with which you are connected? A. Swayze, Bailey & Co.

RRDQ31. And you are one of the partners A. Yes, sir.

RRDQ32. And you come in personal contact with the customers who purchase fountain pens? A. Yes. 1148

Examination of witness closed.

(Signature waived.)

HARRY H. ALLEN, of lawful age, a witness produced on behalf of the plaintiff, being first duly sworn, testifies as follows in answer to interrogatories by Mr. Watson:

Q1. Please state your name, residence and occupation? A. Harry H. Allen; Washington, D. C.; lawyer.

Q2. Do you practice in Washington? A. Yes, in Washington.

Q3. Did you have occasion recently to purchase a fountain pen? A. Yes. 1149

Q4. Where did you purchase that fountain pen? A. In what is known as Gilman's Drug Store, near 7th and Pennsylvania Avenue, Washington, D. C.

Q5. When you purchased this pen, what did you ask for?

By Mr. Stein: Objected to as incompetent, immaterial and irrelevant; no foundation laid, and no connection with this defendant shown.

A. As near as I can recall I asked the clerk for a Watermar pen, and I asked him, "Is this a Waterman's Ideal pen," and he

said, "I suppose so, as it is made by Waterman in New York." I purchased the pen.

By Mr. Stein: Answer objected to on the ground that it refers to a conversation.

Q6. What did you expect to receive when you asked for a Waterman Ideal Fountain Pen?

By Mr. Stein: Objected to as incompetent, irrelevant and immaterial and calling for the operation of the witness' mind.

1151 A. I expected to receive a pen similar to one owned by my friend, Mr. Charles G. Allen—

By Mr. Stein: Objected to as referring to conversation.

By Mr. Watson (to the witness): Will you please continue your answer when interrupted by Mr. Stein?

—which I had previously tried and which he told me was called a Waterman's Ideal Fountain Pen.

Q7. When you purchased this pen at Gilman's Drug Store, and asked for a Waterman Ideal pen, what did you receive? A. A fountain pen.

Q8. What were the marks on it? A. No marks on it at all.

Q9. Have you got the pen? A. Yes, I have it. I haven't it
1152 with me. I never looked for any marks on the pen.

Q10. Did the pen bear the name Waterman Ideal Fountain Pen? A. No, sir.

Q11. In what kind of a box was it contained? A. Well, as near as I can recall it was contained in a box having several compartments, each of which contained several styles of fountain pen.

Q12. When it was delivered to you—was it delivered to you in a box? A. Oh, no; it was taken from a box in the store window. What I call a box, it might be called a display box.

Q13. Did the clerk who sold you the pen call your attention to the fact that it bore the name Waterman on the pen? A.

No, he did not. I saw the name Waterman on the box in which the pens were kept.

Q14. And you remember whether that was L. E. Waterman or A. A. Waterman & Co., New York? A. It was A. A. Waterman & Co., New York.

Q15. Where is the pen now? A. At my residence.

Q16. Will you deliver that pen to the notary public tomorrow? A. I will; I have not a cap for it, but if I can find the cap I will bring that.

By Mr. Watson: The pen referred to by the witness is offered in evidence and the notary is requested to mark the same "Plaintiff's Exhibit 106." 1154

Q17. Did this pen prove satisfactory?

By Mr. Stein: Objected to as immaterial.

A. No, sir.

Q18. What was the matter with it? A. It wrote too coarse for me; it did not seem to feed properly.

CROSS-EXAMINATION by Mr. Stein:

XQ19. Mr. Allen how did you come to testify today? A. Mr. Watson asked me to testify in this case.

XQ20. And when did he first talk to you about testifying in this case? A. As near as I can recall about six or eight months 1155
ago, as I now remember.

XQ21. And when did you buy this fountain pen? A. Sometime in the winter of 1909 or 1910.

XQ22. About a year? A. Yes.

XQ23. Whom did you tell about your experience with this particular fountain pen? A. Mr. Charles G. Allen.

XQ24. Is he the friend you spoke of before? A. Yes.

XQ25. Is he in any way connected with Mr. Watson, or Mr. Raymond, or the firm of Watson & Raymond? A. Not that I know of.

XQ26. Has he any relations at all with anybody connected with the firm of L. E. Waterman & Co.? A. No, sir.

XQ27. Have you? A. No, sir.

XQ28. When did you complain to Mr. Charles G. Allen? A. I don't know that you could call it a complaint. I mentioned that my pen was not very satisfactory some month or two after I purchased it.

XQ29. What business is Mr. Charles G. Allen in? A. Lawyer.

XQ30. Do you know whether he has had anything to do with the fountain pen litigation of L. E. Waterman Co. at any time?
1157 A. He told me some time ago, I believe, that he had testified in this case.

XQ31. Do you know whether any of his other friends besides you have testified in this case? A. No, sir.

XQ32. What was the name of the fountain pen of Mr. Charles G. Allen that you used and that you were so pleased with? A. There was no name on it that I recall. My attention was directed to his pen because it had on its case a masonic square and compass, and we had previously joined a masonic lodge together and Mr. Charles G. Allen told me that his friend, Mr. Watson, of New York, had given him his pen in commemoration of this event.

XQ33. And was Mr. Watson, of New York, Mr. Samuel S. Watson, who is now here? A. Yes, sir.

1158 XQ34. You don't know what name was on this particular pen of Mr. Charles G. Allen's that you saw, do you? A. No, sir.

XQ35. You don't know whether it was an L. E. Waterman pen, or an A. A. Waterman pen, or a Conklin pen, or a Swan pen? A. No, sir.

XQ36. All you know is that you were pleased with a pen of Mr. Charles G. Allen's of whose manufacture or make you are in ignorance? A. Yes, sir.

XQ37. Well then, how was it that without knowing anything about that pen, or who manufactured it, or what name it bore, you asked the clerk in the store whether the pen there shown

you was a Waterman Ideal pen? A. I was at one time an assistant examiner in the United States Patent Office, and as such, I was familiar with the fact that a man by the name of Waterman was regarded as a pioneer inventor in the pen art, and from that time I had always associated in my mind the name of Waterman as the originator or a leading maker of fountain pens, and when Mr. Allen showed me his pen and told me it was a Waterman Ideal pen, I thought or believed that this must be made by the Waterman or his representatives whom I had learned about in the Patent Office as a pioneer inventor. I did not know what his initials were, or the initials of the Waterman Company that produced this pen, or any other Waterman pen, and I did not know what Waterman it was that made the Waterman Ideal pen. I did not know then that there was more than one Waterman Company till I compared my pen with Mr. Charles G. Allen's pen, and he told me that the Waterman Ideal pen was made by a New York firm called L. E. Waterman Co. 1160

XQ38. Do you know whether L. E. Waterman or A. A. Waterman was the pioneer inventor in the art? A. No, sir.

XQ39. Do you know today? A. No, sir.

XQ40. You wanted an Ideal pen, didn't you? A. Yes, sir.

XQ41. You did not care by whom manufactured? A. No, sir.

XQ42. Did the box or the pen that you actually purchased contain the name "Ideal"? A. No, sir. 1161

XQ43. What was the name on that pen? A. As I believe I said before I don't recall what name, if any, there was or is on my pen. I only recall that the name A. A. Waterman & Co., New York, was on the box in the drug store window in which the pens were displayed.

XQ44. What was the name of the clerk from whom you bought that fountain pen in Gilman's drug store? A. I don't know.

XQ45. Is he still there? A. I don't know. I don't think I have been in the store since.

XQ46. What sort of looking person was he? A. I don't know.

XQ47. Was he smooth shaven or did he wear a mustache? A. I don't recall that, because when I purchased that pen, it was about dusk in the evening and I don't recall how he looked.

XQ84. What month was it? A. I don't recall. It was some time in the winter of 1909 or 1910.

XQ49. Recalling your initiation or raising in masonry, can you place the time approximately? A. I don't think I could any nearer than to say it was some time in the winter of 1909 or 1910.

1163 XQ50. But you cannot aid us in any way in identifying the particular clerk at Gilman's Drug Store who sold this pen to you? A. No, sir; I don't think I could.

XQ51. The pen that you purchased at Gilman's I understand was too course for you? A. Yes, sir.

XQ52. Did you endeavor to have another pen or pen point inserted? A. No, sir.

XQ53. From your experience in the Patent Office you knew that the pen in a fountain pen could be removed and one of finer or coarser grade substituted? A. No, sir.

XQ54. Did you try this particular pen before purchasing? A. Yes, sir.

XQ55. And it then wrote smoothly or evenly enough to suit you? A. Yes, sir.

1164 XQ56. How long after the purchase did it develop this habit of writing too coarse for your purposes? A. Directly after I purchased the pen.

XQ57. How many days? A. Oh, I don't recall that.

XQ58. Was it a month? A. I cannot recall.

XQ59. Was it a week? A. I do not recall.

XQ60. Was it after you had used different kinds of ink in it, or had refilled the pen? A. I should say that I had refilled the pen several times with black ink, wherever I had found a supply.

XQ61. Have you ever heard that all fountain pens do their best work when filled with a blue ink? A. No, sir. My pre-

vious experience with fountain pens led me to believe that their chief function was to deposit the ink they contained in one's vest pocket.

XQ62. How much previous experience had you had with fountain pens? A. I had previously purchased two different types of pen at the solicitation of various friends of mine who were so unfortunate as to own them.

XQ63. And who tried to have you share their misfortune with them? A. Yes, sir.

XQ64. What were the names of them? A. One, as I recall, was a Caw pen and the other I don't remember the name of.

XQ65. And the fact that this particular pen bought at Gilman's wrote too coarsely for you, plus the fact that you had 1166
lost the cap of that pen, are the two things that you don't like about it? Is that correct? A. I think it is only fair to say that the pen I bought at Gilman's is capable of being used for writing purposes, and I frequently make use of this pen today. As I stated before, however, it seems to feed too freely and therefore write too coarsely, and I was immediately struck with the seemingly inferior work performed by this pen whenever I used the pen owned by my friend, Mr. Charles G. Allen, which I did quite frequently.

XQ66. How frequently did you use that pen? A. Perhaps several times a month.

XQ67. And still do? A. Whenever we are together and I wish to do any writing it is my practice to borrow his pen. 1167

XQ68. Have you bought a pen similar in manufacture, if not in ornamentation, to that owned by your friend, Mr. Allen? A. No, sir.

XQ69. Have you ever brought this pen to anybody to have the feed set right? A. No, sir.

XQ70. Do you know that that is merely a little mechanical detail that can be corrected in a minute or two? A. No, sir; I know nothing of the construction or operation of fountain pens, only in a general way.

XQ71. Does your general knowledge give you the fact that a slight readjustment is all that is necessary to have the feed

act properly? A. Now that you have asked me this question I readily see that perhaps an adjustment might remedy defects in the feed of the fountain pen.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ72. Do you remember when you lost the cap of this pen? A. I do not; perhaps I may be able to find it.

RDQ73. Was the fact that you lost the cap one of the reasons for your saying that the pen did not operate well? A. No, sir.

1169 Examination of witness closed.
(Signature waived.)

ROLLAND E. FLEHARTY, of lawful age, a witness produced on behalf of the plaintiff, being first duly sworn, testifies as follows, in answer to interrogatories by Mr. Watson:

Q1. Please state your name, residence and occupation? A. Rolland E. Fleharty; residence 1726 Kilbourne Place, Washington, D. C.; manager of R. P. Andrews Stationery Store, 1331 F Street, N. W., Washington, D. C.

Q2. How long have you been in the stationery business? A.
1170 About fourteen years.

Q3. How long have you handled and sold fountain pens? A. All the time—fourteen years.

Q4. What kind of fountain pens have you handled and sold? A. L. E. Waterman, Sterling, the Wirt, and the Moores.

Q5. How long have you sold the Waterman Ideal Fountain Pen? A. For fourteen years.

Q6. Has this pen proved generally satisfactory to your customers as far as the matter has come to your attention?

By Mr. Stein: Objected to as incompetent, immaterial and irrelevant.

A. It has.

Q7. What name do your customers use in asking for Waterman Ideal Fountain Pens? A. As a rule the Waterman.

Q8. And how long has this been a fact? A. Ever since I have handled the pen.

Q9. And how is the Waterman Ideal Fountain Pen referred to by the dealers that you have talked to about it?

By Mr. Stein: Objected to as immaterial, incompetent and irrelevant; no proper foundation laid.

A. As a rule it is referred to as the Waterman.

Q10. Have you ever spoken or talked with other dealers about Waterman Ideal Fountain pens and other fountain pens? A. Yes, sir. 1172

Q11. In your experience in handling fountain pens, which fountain pen, in your opinion, is the best on the market?

By Mr. Stein: Objected to as incompetent, immaterial and irrelevant.

A. L. E. Waterman.

Q12. Have you ever heard dealers express their opinion as to what fountain pen was the best on the market, in their experience?

By Mr. Stein: Objected to on the same grounds as before. 1173

A. Yes, I think most dealers will speak of the Waterman as the standard pen.

Q13. And what do you mean by the standard pen? A. Well, the pen that is called the standard is recognized as the best.

Q14. Have you ever sold or handled the pen marked A. A. Waterman & Co.? A. I have never sold them. I have handled them for repairs.

Q15. Have any instances or occasions come to your notice where there has been confusion in the minds of the public between the Waterman Ideal fountain pen and those stamped A. A. Waterman & Co.? A. Yes, sir.

1174 *Rolland E. Fleharty*

Q16. How did those instances come to your attention?

By Mr. Stein: Objected to as incompetent, immaterial and irrelevant.

A. Well, there was a man came into the store last week and was looking at the L. E. Waterman fountain pens, and made the remark that that pen was not like his. He said I thought I was buying the L. E. Waterman Fountain pen. I asked him to show me his pen, and he showed me the A. A. Waterman pen, and I explained the difference between the pens.

Q17. Did he say where he had bought his pen? A. I did not ask him.

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Q18. Did any other instances come to your attention? A. There have been several instances similar to that one as coming to my knowledge. Men have bought pens supposing they were buying the L. E. Waterman and afterward found out they had bought the A. A. Waterman. These men did not ask for the L. E. Waterman, but asked for the Waterman pen and supposed they were getting the L. E. Waterman pen.

CROSS-EXAMINATION by Mr. Stein:

XQ19. Can you give me the name of one man who said that he was misled or confused into buying A. A. Waterman for L. E. Waterman pens? A. The man was a stranger to me. I

1176

did not ask him his name. He was not buying a pen of me; he simply saw the case and asked about it.

XQ20. When were you first asked to testify in this matter? A. I think it was last Saturday.

XQ21. After this man had come into your place so confused? A. Yes, afterwards.

XQ22. How long since you bought any A. A. Waterman & Co.'s fountain pens? A. I never bought any.

XQ23. Ever handled any? A. None, except for repairs.

XQ24. How often do you repair them? A. As often as they come in in the course of business. We repair all kinds of fountain pens.

XQ25. How many A. A. Waterman fountain pens do you repair in the course of a week?

By Mr. Watson: Objected to as entirely immaterial.

A. None, as averaged by the week. Very few in the course of a year.

XQ26. And how many L. E. Waterman pens do you repair in the course of a week? A. Probably four or five.

XQ27. Have you made a critical examination of the A. A. Waterman fountain pen before you came here? A. Not recently; I have in times past.

XQ28. Have you examined any of them made by the A. A. Waterman Co. in the past year? A. Yes, sir. 1178

XQ29. I mean, have you examined any pens made by A. A. Waterman & Co. within the past year? A. I don't know when they were made. I examined them and they had the A. A. Waterman name on them.

XQ30. Were they self-filling pens? A. Some of them.

XQ31. Do you confine yourself wholly to the purchase and sale of fountain pens manufactured by L. E. Waterman and Co.? A. No, sir.

XQ32. What other ones do you buy and sell now? A. Moore's Non-Leakable, and a pen that is called Andrew's Special, and the Onoto.

XQ33. Can you give us any information at all that will lead to the identity of any of those persons whom you say came to 1179 you confused by reason of the similarity of names? A. No, sir; I made no note whatever of who they were or where they were from.

XQ34. Now this man who came in last week, looked at your pens, and said his pen was unlike yours, and that he thought he was buying an L. E. Waterman Ideal Fountain Pen. Was that right? A. That is right.

XQ35. Now did you look at his pen? A. I did.

XQ36. And did that pen have plainly marked upon it A. A. Waterman & Co.? A. It did.

1180 *Rolland E. Fleharty*

XQ37. Did it have any other name on it? A. Nothing that I could see.

XQ38. But without examining it carefully you could not overlook the fact that it had A. A. Waterman & Co., New York, prominently stamped on it? A. No, I could not overlook the fact that it had A. A. Waterman & Co. prominently stamped on it.

XQ39. But you did not look to see whether it bore any distinctive trade name, like "The Modern" stamped on any part of it? A. No.

XQ40. You testified I believe that people who came in with
1181 L. E. Waterman pens described their pens as Waterman. Is that right? A. Yes, sir.

XQ41. Now people who came into your place with A. A. Waterman pens to be repaired described their pens as Waterman, did they not? A. I don't believe they did.

XQ42. How do they usually describe them to you? A. As a rule they will bring a pen in and want to know if you repair fountain pens, and I tell them we do, and they hand me the pen. I look at the pen, and make no comments except telling what it will cost to repair the pen.

XQ43. But you can always tell whether that particular pen is of the manufacture of A. A. Waterman & Co. or L. E. Waterman & Co.? A. Yes, sir.

XQ44. You are never confused, are you? A. Never.

1182 XQ45. Do you know of any experienced dealers who are confused? A. I do not. I never heard them say that they were.

Examination of witness closed.

(Signature waived.)

CHARLES G. STOTT, of lawful age, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows in answer to interrogatories by Mr. Watson:

Q1. Please state your name, residence and occupation? A. Charles G. Stott; business address, 309 Ninth Street, N. W.; residence, 3108 Seventeenth Street, N. W., Washington, D. C.; paper dealers and stationers.

Q2. What is the name of the concern with which you are associated? A. Charles G. Stott & Co., at 309 Ninth St., N. W., Washington, D. C.

Q3. Do you handle and sell fountain pens? A. We do.

Q4. How long have you handled and sold fountain pens? A. 1184
Fifteen years, I will say, more or less.

Q5. What kind of fountain pens have you handled during this period? A. I have never handled any but the Waterman Ideal as a standard pen; and a cheaper pen, a pen that sells around a dollar.

Q6. Does the L. E. Waterman Co. make this cheaper grade of pen that you mention? A. The one that we are handling at present is made by the Aikin-Lambert Co.

Q7. By what name do your customers usually call Waterman Ideal Fountain Pens? A. Waterman.

Q8. And how long has that been a fact? A. As long as we have been handling them.

Q9. Is that the name by which they are commonly known 1185
and called for?

By Mr. Stein: Objected to as incompetent, irrelevant and immaterial and no proper foundation laid.

A. As far as my individual experience goes, I should say, yes.

Q10. Have the Waterman Ideal Fountain Pens, so far as the matter has come to your knowledge, proved satisfactory to your customers?

By Mr. Stein: Objected to upon the same grounds.

A. Highly so.

1186 *Charles G. Stott*

CROSS-EXAMINATION by Mr. Stein:

XQ11. The Aikin-Lambert Co., from whom you buy the cheaper grade of pens, is owned by L. E. Waterman Co., is it not? A. I am so advised. I have no technical knowledge to that effect.

XQ12. And prior to purchasing from Aikin-Lambert from whom did you purchase your cheaper pens? A. From Aikin-Lambert and others.

XQ13. Pens are a side line with you, are they not? A. No; under my knowledge as to what you mean by a side line.

1187 XQ14. They don't constitute your main branch of activity, do they? A. Nor does anything else in a retail way. Our main business is wholesale.

XQ15. Outside of this cheaper line, you have always purchased your fountain pens from L. E. Waterman & Co.? A. Yes.

XQ16. Have you any agreement with L. E. Waterman & Co., or understanding, that you were not to purchase any high priced or medium line of fountain pens from any other person or entity? A. No.

Examination of this witness closed.
(Signature waived.)

1188 It is hereby stipulated by counsel that the hearing at Baltimore, adjourned from this morning until tomorrow morning, April 5th, 1911, is waived and that neither counsel need appear.

And counsel also stipulate that if the witnesses William W. Norman and J. Edward Nunn, noticed for today, do appear in New York on notice to defendant's counsel they may be examined there on twelve hours' notice, at an hour to be agreed upon within the twelve hours.

L. E. WATERMAN COMPANY,
Plaintiff,
against
MODERN PEN COMPANY,
Defendant.

The deposition of Walter A. Buhrman, witness produced and sworn to before John R. Hinshaw, a notary public, of Henry County, Indiana, at New Castle, Indiana, on the 5th day of January, 1911, pursuant to the enclosed notice.

This deposition taken on the part of the plaintiff in a certain 1190
action now pending in United States Circuit Court, Southern District of NewYork, wherein, L. E. Waterman Company is plaintiff and the Modern Pen Company is defendant.

The said WALTER A. BUHRMAN, being duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows:

Examined by Walter B. Raymond, of counsel for plaintiff:

Q1. What is your name, residence and occupation?

Objection by Mr. Bacon of counsel for defendant.

I object to the taking of this testimony and to all of the testimony taken on this tour on the ground that more 1191
than ninety days have expired since the issue was formed by the service of the replication and the time has not been extended consent or order.

Mr. Raymond: I have a copy of a letter of Mr. Bacon, in which he requested us not to take any testimony until after the determination of the Appeal from the preliminary injunction, and insist upon the regularity of the taking of the present testimony on the ground that the

1192 *Walter A. Buhrman*

time for taking such testimony has been delayed and extended by mutual consent.

Mr. Bacon: I call for the production of the letter, and state that any suggestion contained in any similar letter was not acceded to.

A. Walter A. Buhrman; New Castle, Indiana; jeweler.

Q2. How long have you been in that business? A. Eighteen years in and out of it.

Q3. During what part of this time, if any, have you been handling fountain pens? A. In the last nine months.

Q4. What makes of fountain pens do you handle? A. I
1193 handle the A. A. Waterman, Conklin and Parker.

Q5. Will you state in your own words what occurred in your store on or about March 21st, 1910, in reference to a visit of a traveling salesman for fountain pens? A. The salesman called, saying that he had a line of fountain pens that he would like to show me.

Q6. How did he introduce himself to you? A. He did not introduce himself to me by name, and I asked him what line he had, he told me the Waterman.

Q7. What else did he say? A. He proceeded to show me his line.

Q8. How did he describe the pens to you in showing you the line? A. He said to me, "The Waterman line, you know they
1194 are the best."

Q9. Did he say that he represented A. A. Waterman & Company? A. No, sir.

Q10. Did he say that he represented the Modern Pen Co.? A. No, sir.

Q11. How did he describe these pens to you, by what name? A. Well, when he referred to them he called them the "Waterman Pen."

Q12. Did you know of any concern called the A. A. Waterman & Company? A. I did not.

Q13. Did you know of any make of fountain pens called or known as Waterman pens? A. I did.

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Q14. By whom are the fountain pens that you knew as Waterman pens manufactured? A. By the L. E. Waterman Company.

Q15. Were these the only pens that you knew as Waterman pens? A. Yes, sir.

Q16. Did you at the time this salesman called upon you, know the exact corporate title of the company manufacturing the pens you knew as Waterman pens? A. I did not.

Q17. By what name did you know that company? A. Well, I in my own words, would say, "The Waterman Pen Company."

Q18. Did you know the name of this salesman who called upon you? A. I did not. 1196

Q19. Can you describe him? A. I can as nearly as I remember.

Q19. Will you please do so? A. A man of five feet eight or ten inches in height, dark complexion, smooth shaven, I would say between thirty and thirty-five years of age.

Q20. Did you buy any pens from this salesman? A. I did.

Q21. Did this salesman give you any instruction as to the name under which these pens you bought should be sold? A. He did not.

Q22. Did you sell any of these pens? A. I did.

Q23. Under what name or representation did you sell these pens? A. As the genuine L. E. Waterman Pen.

Q24. When did you first find that you did not have the genuine L. E. Waterman Pens? A. Why, the first I knew was an 1197
advertisement—I noticed in a magazine of the L. E. Waterman Company, and in this I saw the cut of a pen, with what I would call their trade-mark on it; I had never noticed this trade-mark on the pens that I had in stock, and went to the show case to particularly see if they were the same as the advertisement, well this was dropped for the time being and was not brought to my mind again, until a representative of the L. E. Waterman Company called on me and I told him what I had noticed; he then told me of the existence of the A. A. Waterman Company, that I had not heard of before.

CLOSE IN CENTER

1198 *Walter A. Buhrman*

Q25. Previous to March, 1910, were you familiar with the different makes of fountain pens? A. I was not.

Q26. Had you heard of the Waterman Pens prior to that time? A. I had.

Q27. How did you know them by reputation or actually handling them? A. I knew them by reputation.

CROSS-EXAMINATION by Mr. Bacon, counsel for the defendant:

XQ1. Did this salesman sell you a bill of goods? A. He did.

1199 XQ2. You got them from New York? A. I believe that I got them from New York.

XQ3. You got a bill with the goods? A. I did.

XQ4. You saw the bill? A. I did.

XQ5. Have you got it here? A. Yes, sir.

Mr. Bacon: I offer this bill in evidence.

Received and marked Defendant's Exhibit "A," January 5th, 1911.

XQ6. When you saw this bill, you knew without any question that these were A. A. Waterman and Company Pens, did you not? A. No, I did not.

XQ7. Did you not read the bill? A. I did and checked.

1200 XQ8. You saw on this bill, did you not, in very large letters, "Modern Pen Company, sole selling agent for A. A. Waterman and Company"? A. Well, I should have seen that but I didn't pay any attention to it.

XQ9. Did you at any time, make any complaint to the New York office that you had not bought what you thought you were buying? A. I did not.

XQ10. You found the pens perfectly satisfactory? A. Not all of them.

XQ11. Have you made any complaint to the New York office or to anyone else? A. I did to the representative the last time he was here.

XQ12. When was that? A. Well, he was here twenty-four hours before Mr. Raymond was here, which was December 13th, 1910.

XQ13. How many pens did you buy? A. I don't remember how many, I can tell from the bill. (Here witness examines the bill, Defendant's Exhibit "A.") Upon examination of the bill I find I bought eighteen pens.

XQ14. Of different grades? A. Yes.

XQ15. You didn't send any of them back either to be fixed or exchanged? A. I did not.

XQ16. Was it the same salesman on December 12, that called on about March 21st, 1910? A. It was.

1202

XQ17. You didn't get his name on either occasion? A. I did not.

XQ18. When did you first see Mr. Raymond? A. On December 13th, 1910.

XQ19. He said that he was going around in this country to find evidence in this suit, did he? A. No, he did not tell me that.

XQ20. What did he tell you in relation to that subject-matter? A. He talked to me about having bought this bill of pens, about the conversation I had with the L. E. Waterman representative, and the way the salesman who sold me the pen, represented them to me.

XQ21. Did he not refer to your giving testimony? A. He did.

1203

XQ22. And the questions and answers of your testimony were taken down at that time, were they not? A. They were.

XQ23. When was the L. E. Waterman representative first here? A. Some weeks after I had received the pens, that I had bought.

XQ24. Did he threaten you with suit? A. He did not.

XQ25. Did he say anything about suing you if you sold these A. A. Waterman pens as Waterman pens? A. He did not.

XQ26. What was the name of the L. E. Waterman representative? A. I do not know.

1204 *Walter A. Buhrman*

XQ27. You have been giving Mr. Raymond assistance, with information, have you not? A. Well, I don't know how to answer that question, in fact I don't understand it.

XQ28. Repeat the question. (Question reread by notary.) A. I have.

XQ29. Have you made any arrangements either direct or indirect to handle the L. E. Waterman pens? A. I have not.

XQ30. You are very anxious for the L. E. Waterman people to succeed in this litigation, are you not? A. I can't say that I am anxious.

XQ31. But you would like to see them win? A. My answer to that will be, if it will keep others from being trapped as I was.

1205 XQ32. And yet you say that you made no complaint about the A. A. Waterman pens or treatment? A. My answer to that is, that I complained to the representative the last time he called, regarding a number of pens, that had not given satisfaction and he instructed me to send them in for repairs.

XQ33. And you haven't done it? A. No, I have not.

XQ34. The second time this man called on December twelfth, nineteen ten, did he tell you whom he represented? A. He did not.

XQ35. Did you say anything to him about his representing the A. A. Waterman and Company or the Modern Pen Company? A. I told him, that I didn't want any more of the pens and told him of the dissatisfaction a number of the pens had

1206 caused, and showed him one that I had in stock, that was broken, it was then he said, to send them in for repairs.

XQ36. What part of the pen was broken? A. The chamber as I would term it, the ink chamber.

XQ37. Do you mean the rubber sack? A. No, it was the screw on the end of the rubber holder, it would not work.

XQ38. Was that the only pen that was broken? A. Yes, that was the only one that was broken.

RE-DIRECT EXAMINATION by Mr. Raymond:

RDQ28. At the time you read this bill, the Defendant's Exhibit "A," were you familiar with the selling method of the L. E. Waterman Company? A. I was not.

RDQ29. Did you know whether or not the L. E. Waterman Company distributed its Waterman pens through the medium of a selling agent, or rather I should say, did you know whether or not, the pens that you then knew as Waterman Pens were distributed through the medium of a sole selling agent? A. I did not.

RDQ30. Did you know the initials "L. E." in connection with the word, "Waterman," at the time you ordered these pens from the salesman in question? A. I did not.

RDQ31. Did the initials "A. A." in connection with the word "Waterman" convey to your mind, at the time you read the bill in question, any distinctive kind or different kind of Waterman Pen from those which you knew under the name "Waterman Pens"? A. No, sir. 1208

RDQ32. Did this salesman give you any card? A. He did not.

RDQ33. I hand you an affidavit, verified by you December 13th, 1910, and ask you whether that is what you referred to in answer to Col. Bacon's question, that the written answer and question had been furnished you? A. It was.

Here the affidavit identified by the witness is offered and marked for identification, Plaintiff's Exhibit "1."

RE-CROSS EXAMINATION by Mr. Bacon:

1209

RXQ39. In March, 1910, you were unfamiliar or new to the fountain pen business? A. I was.

WALTER A. BUHRMAN.

1210 *Herbert Baker*

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Plaintiff,
against
MODERN PEN COMPANY,
Defendant.
} In Equity.

1211 Deposition of Herbert Baker, taken pursuant to the annexed notice, at the office of Myron B. Moore, notary public, in the City of Allegan, State of Michigan, on the 6th day of January, 1911.

Present:

Walter B. Raymond, of counsel for Plaintiff.
Alexander S. Bacon, of counsel for Defendant.

HERBERT BAKER, being called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

Q1. What is your name, residence and occupation? A. Herbert Baker; druggist; residence is 419 Hubbard Street, Allegan, Michigan.

1212

Q2. How long have you been in the drug business? A. Since the 26th of March, 1910.

Q3. During what part of this time, if any, have you been handling fountain pens? A. Never handled them before until this order.

Q4. About what date? A. I have forgotten the date of that order, but it seems as though it was the 26th of August.

Q5. What occurred on or about the 26th day of August, 1910? Please state in your own words what occurred. A. Well, it was in the evening that a salesman called on me, representing

the Waterman fountain pen. I do not know as he said whether it was A. A. Waterman or L. E. Waterman, not being experienced in the business of handling fountain pens, although I knew of the Waterman pens by its extensive advertising and lots of people used them. It is considered a high grade pen. The Waterman and the Parker pens are considered to be the best high grade pens in the market.

Q6. What did the salesman say when he introduced himself to you? A. He said he was representing the Waterman Pen Company. As I said before, I don't know as he mentioned whether it was A. A. or L. E.

Q7. Did he show you any pens? A. He laid his display out on the show case and explained his assortment. 1214

Q8. How did he describe these pens to you? A. He described the quality of them.

Q9. By what name did he describe the pen? A. Waterman. Nothing to my knowledge said about being a branch or any thing of the kind.

Q10. Did he explain to you that these pens were made by A. A. Waterman & Co.? A. I don't remember whether he did or not.

Q11. Did he say anything to you about the Modern Pen Company? A. No, of course, I had no knowledge of any concern only one Waterman.

Q12. Did you buy any of these pens? A. I bought a two dozen assortment, $47. 1215

Q13. State just what occurred about the purchase of these pens and their delivery? A. We picked out—sorted up the pens, one or two stub pens and self-fillers to make up a nice assortment, as much as one could in a two dozen assortment. A display case was to come with the order free. It run along, I guess ten days or two weeks and I got the pens, and the case was on the invoice but it didn't come; and I waited along a week or ten days, and I wrote a letter to the Waterman Pen Company. I think they invoiced at 2% 10 days, 30 days net. I am in the habit of paying in cash and discounting my bills.

Q14. Where did you get the address that you wrote this letter to? A. Out of a catalogue that I had in the store. I ran across it in my desk.

Q15. Whose catalogue was this? A. It proved to be L. E. Waterman's.

Q16. Did you get any reply from the L. E. Waterman Co.? A. I wrote a letter and I got a letter saying they never had any order from me.

Q17. I hand you a letter addressed to you and bearing date September 22, 1910, and signed by stamp L. E. Waterman & Co., and ask you whether that is the letter received in reply to your letter? A. Yes, sir.

1217

I ask to have it marked in evidence.

Mr. Bacon: Objected to as immaterial, irrelevant and incompetent.

Plaintiff's Exhibit One of January 6, 1911, offered in evidence.

Q18. What did you do with this letter? A. I looked up my invoice, the bill that they had sent me of the pens, the statement itemized of the list of the pens that I purchased, and I answered the letter and sent the order right back so that they could see themselves just what kind of an order I had purchased.

Q19. Didn't you return the letter to them, Plaintiff's Exhibit One, to the L. E. Waterman Company with that bill? A. Yes,

1218 sir; I sent him the whole thing.

Q20. Then what did you do? A. Well I don't recollect whether I got an answer from them or not, but it wasn't but a short time until the representative salesman of the L. E. Waterman people called on me and explained the situation.

Q21. Did this salesman who called upon you explain to you that there was an A. A. Waterman & Company and L. E. Waterman & Company manufacturing fountain pens? A. No, I don't know as he did, I don't think he did.

Q22. Did he give you any instruction as to the name under which the pen that you bought should be sold? A. No, no, sir.

Q23. How did he describe these pens in speaking of them to you? By what name? A. The Waterman.

Q24. Had you ever heard of A. A. Waterman & Co.? A. I had not.

Q25. Did you know of any pen known as the Waterman prior to this time? A. Yes, sir.

Q26. Did you know it from handling them or from its reputation and advertisement? A. From its reputation.

Q27. Did you know the exact corporate title of the L. E. Waterman Co.? A. I knew nothing about it.

Q28. All that you knew was the name Waterman in connection with fountain pens? A. All I knew was the Waterman 1220
pen.

Q29. When you bought these pens did you believe that you were buying the pen—

Mr. Bacon (interrupting): I object to expression of belief, and ask that the witness be restricted to what was said and what was done.

Mr. Raymond: I will continue my question.

Q30. Did you believe that you were buying the pens which you knew as Waterman pens? A. I thought I was getting the Waterman pen.

Q31. That is, the pen which you knew as the Waterman pen? A. Yes, because I did not know any different.

Q32. Did you sell any of these A. A. Waterman pens which 1221
you purchased? A. I did not.

Q33. Did you try to sell any of them? A. No, I had no way of displaying them, consequently I did not put them on sale.

Q34. Did you ask this salesman whether these were the Waterman pen which you had seen advertised? A. I did not.

Q35. Did you have any conversation with him on the subject of the name Waterman? A. No more than we would naturally, only what anyone would talk in a line of goods against their competitors, there is always something said.

Q36. Did he mention the Waterman Ideal Pen Company as a competitor? A. No, as I said before, I do not recollect any

1222 *Herbert Baker*

statement being made about any particular Waterman or anything of that kind.

Q37. Did he introduce himself to you by handing you a card? A. I don't think he did. No, just simply introduced himself as a representative of the Waterman fountain pen, a salesman of the Waterman fountain pen.

CROSS-EXAMINATION by Mr. Bacon:

XQ38. Do you know the salesman's name? A. I can't speak it now.

1223 XQ39. Did he tell you his name? A. I think he did at the time.

XQ40. Did he give you any advertising matter? A. No.

XQ41. Can you give the conversation that passed between you and him as nearly accurate as possible? A. Well, as I made the statement before, he came in the store and said he was representing the Waterman Fountain Pen Company, wanted to know if he could interest me, wanted to know if I carried fountain pens. I told him I never had carried them.

XQ42. He showed you the pens? Showed you the name on the penholder? A. I don't remember that there was anything said about the name on the holder.

XQ43. You are not prepared to swear that he didn't tell you that he represented A. A. Waterman & Co.? A. No, I would

1224 not swear that he didn't.

XQ44. And you afterwards returned the pens to A. A. Waterman & Co.? A. Yes, sir.

XQ45. And the reason you did that was because the display case did not accompany the pens? A. Yes, sir.

XQ46. It was some accident or other that prevented it? A. There was no explanation, I never heard from them. I got a letter, I think, from the salesman in Cincinnati or Toledo. I answered it and he wrote me again, asking why I had returned the pens; he had received a letter from the house saying I had returned the pens. I did not write the house in explanation of

why I had returned the pens. They were taking it up with their salesman.

XQ47. Didn't you write the house in New York that you were returning the pens because the case did not come? A. Yes, I wrote the house.

XQ48. Have you got the letters from the salesman? A. I don't know whether I have or not.

XQ49. Describe the salesman. A. He was a large man, would weigh close to 200 pounds, good height, smooth face, a man as tall as Mr. Raymond.

XQ50. How tall is that? A. Close to six feet.

XQ51. Smooth face? A. Yes, sir.

1226

XQ52. You would not have sent them back if the case had accompanied the order? A. No, sir. I would not have known any difference between the A. A. Waterman and the L. E. Waterman.

XQ53. You are selling the L. E. Waterman pen now? A. Yes, sir.

XQ54. And did they send a salesman to you right away after they got your letter? A. Not right away, in eight or ten days.

XQ55. That salesman induced you to send back the others and take theirs? A. No, I would not call it that. I took it on my own business ability to order them, after I had learned the difference between the Ideal pen and the other pen, and the manner in which they done business. I was rather put out about it to think they would not fill the order.

1227

XQ56. Then it was because the display case did not come with the pens that disturbed you? A. Yes, sir.

XQ57. You did not know anything about the quality of pens, did you? A. No, nothing in particular, only a matter of judgment.

XQ58. You didn't know that the L. E. Waterman didn't make their pens at all? A. No, sir; I didn't know it.

XQ59. You did not know that the A. A. Waterman Co. manufactured every part of their pens with the finest material in the world and the most skilled workman that could be produced? A. I did not.

1228 *Herbert Baker*

XQ60. You are not prepared to say that the L. E. Waterman pen is a better pen than the A. A. Waterman pen? A. No, sir; I am not.

XQ61. You are not prepared to say that the salesman deceived you in any way by telling you they were Ideal pens or L. E. Waterman pens? A. I am prepared to say this, that they did not live up to their order in sending on the case. That was all. The A. A. Waterman pens are a much cheaper looking pen than the L. E. Waterman pen.

XQ62. You only say that the pen was a cheaper looking pen? A. No, but the case that they come in and the general appearance of the whole outfit.

1229 XQ63. You are not prepared to say that this salesman, whose name you don't remember, did not give you his card? A. No, I won't say he did or did not, because that would be taking up too much time to remember about selling things.

XQ64. You won't say that he didn't show you any advertising matter with A. A. Waterman & Co. on it? A. No, I won't say he didn't show me any advertising matter. It might have been L. E. Waterman.

XQ65. You are not prepared to say he did not show you advertising matter or catalogues of A. A. Waterman & Co.? A. No, I would not say he did not; did or did not, I don't remember.

XQ66. You don't remember what he said about whom he
1230 was representing? A. Not in particular about whether it was A. A. Waterman or L. E. Waterman, but I do know he represented the Waterman fountain pen.

XQ67. You are not prepared to say that he said that he represented the A. A. Waterman Pen Company? A. No.

RE-DIRECT EXAMINATION by Mr. Raymond:

RDQ68. Are you sure that he did not explain to you that there were companies, A. A. Waterman & Co. and L. E. Waterman & Co.? A. Well, if he did, I don't recollect whether he did or not.

1231

RDQ69. If he had explained that to you you would probably remember it? A. Well, I probably would, but it would not probably have made any difference.

RDQ70. If he had told you that the L. E. Waterman Co. was the original Waterman Co. would that have made any difference to you? A. Well, that is hard to tell whether it would or not. If I had known anything about a fountain pen, been interested in it before, why I would have been looking out to get the best one.

RDQ71. What pen, in your mind, was the best pen?

Mr. Bacon: Objected to as irrelevant.

1232

RDQ72. What pen had you determined that you wanted to carry? A. Those who are handling pens here have only one agent in town, and the Waterman I knew was a well known pen, and there was no agency here, and that is why I took it. There would be no use of my taking up or buying a few of some pens that were handled here when I could get some that were not handled here.

RDQ73. Did this salesman give you any instructions that these pens could be sold only as pens manufactured by A. A. Waterman & Co.? A. No, there was nothing said how they were to be sold.

RDQ74. Did you call these pens by name in the presence of this salesman? A. We talked of the Waterman pen and different pens, of course.

1233

RDQ75. Did he correct you when you said Waterman pen? A. No.

RDQ76. Tell you you should only call it A. A. Waterman & Co. pen? A. No, there was no restrictions.

RDQ77. Can you remember the name of the man to whom you wrote, this salesman? A. I can't recollect it now, but I have the name in the desk. I can look it up in the letter.

RDQ78. Was it Bartlett? A. That is the name, Bartlett.

1234 *Plaintiff's Exhibit 1*

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ79. You are not prepared to say that he did not tell you that these were the A. A. Waterman pens? A. No, I am not.

RXQ80. That you should sell them as such? A. No, he did not give me any instructions to sell them as any particular Waterman pen.

RXQ81. He did not say anything about it? A. Not to my knowledge. I don't remember that he did.

RE-DIRECT EXAMINATION by Mr. Raymond:

1235

RDQ822. But you spoke of these pens in his presence and called them the Waterman pen? A. Yes.

HERBERT BAKER.

Plaintiff's Exhibit 1, of Jan. 6, 1911.

(Referred to in Witness Baker's testimony.)

Letterhead of

1236 L. E. WATERMAN COMPANY

173 Broadway,

New York, N. Y. Sept. 22, '10.

Mr. Herbert Baker,
Allegan, Michigan.

Dear Sir:

We beg to acknowledge the receipt of your letter of the 14th, and to report that we have carefully looked thru our records, but cannot locate your order. We therefore, write to ask if

you will kindly give us the date of this order, so that we can give it proper attention. We regret very much if we have given you cause for complaint.

Thanking you in advance for your early advice, we remain,

Yours very truly,

L. E. WATERMAN CO.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

1238

L. E. WATERMAN COMPANY,
Plaintiff,
against
MODERN PEN COMPANY,
Defendant.
} In Equity.

Depositions taken before H. H. Beecher at Delaware, Ohio, pursuant to notice hereto annexed, on the 3rd day of January, 1911.

Appearances: 1239

Walter B. Raymond, of counsel for Plaintiff.
Alexander S. Bacon, counsel for Defendant.

FRANK N. SELL, being duly sworn and called as a witness on behalf of the plaintiff and first duly sworn, replied as follows:

Direct-examination by Mr. Raymond:

Q1. What is your name, residence and occupation? A. Frank N. Sell, Delaware, Ohio, proprietor stationery store.

1240 *Frank N. Sell*

Q2. How long have you been in the stationery business? A. A year and a half.

Q3. Have you been handling fountain pens during this time? A. Yes.

Q4. What makes of fountain pens do you handle? A. Waterman Ideal, William Bolles' Standard self-filling pen; O. E. Weidlich & Company.

Q5. Did a salesman call upon you several months ago? A. Yes.

Q6. Will you state just what occurred when this salesman called upon you? A. The salesman in reference—you mean who he was?

1241

Q7. Who he was, what he said to you and what you said to him? A. He introduced himself to me as selling Waterman pens.

Q8. Did he say that he was selling A. A. Waterman & Company pens? A. No, he didn't.

Q9. Did he say that he had any connection with the Modern Pen Company? A. Not to my knowledge.

Q10. Just how did he introduce himself to you? What words did he use as near as you can recollect? A. As I said before that he was selling Waterman pens, in the introduction.

Q11. Did he show you the line of pens that he was carrying? A. Not for some time after his arrival, just prior to leaving the store.

1242

Q12. Did you have any other conversation with him, about who he was or who he was representing? A. He—I asked what had become of a Mr. Hudson that had previously represented the Waterman people in this territory, and who had called upon us about a year previous, and he said that he was a new man over the territory, but didn't make any special reference to Mr. Hudson.

Q13. When he showed you this line of pens how did he describe them to you—under what name? A. The only reason that I gave him any attention and subsequently allowed him to show me his assortment of fountain pens was because I was under the impression—

Mr. Bacon: Objection to any impressions of the witness and demand that the testimony be what was said and what was done.

Q14. I suppose this was very short? A. Yes, I was just telling my impressions.

Q15. What did you gather your impressions from? A. From his style of introduction mostly.

Q16. Did you look at his pens? A. Yes, I did.

Q17. How did he describe these pens to you? A. Well—

Q18. What name did he give them? A. There was no description given but the only thing that I can remember then was that I happened to notice the inscription on the barrel of 1244
the pen.

Q19. Did he call your attention to it? A. No, he didn't, I called his attention to it.

Q20. Did he call them the Waterman pen? A. He did, I am certain, at the start.

Q21. What did he say when you called his attention to the initials A. A. on the pen? A. To the best of my knowledge he said that didn't make any difference.

Q22. Then what did he do? A. Of course then, I ceased to take any more interest in the line as we were not looking to take on any new lines, and then as I did not give any more attention he excused himself.

Q24. Is this paper published in your town? A. Yes, sir. 1245

Q25. Do you subscribe for it? A. Yes, sir.

Q26. Did you receive that in the ordinary course of mail? A. This issue?

Q27. Yes? A. We did; our name is on the back of it.

Mr. Raymond: I ask to have this marked and offered in evidence.

Marked Plaintiff's Exhibit 1 of Jan. 3, 1911.

CROSS-EXAMINATION by Mr. Bacon:

XQ28. When was it this gentleman called? A. Well, you know I haven't got the exact date, while I have not got it clear

in mind just at what time, but from my recollection I would imagine that his visit was here in September, I think.

XQ29. 1910? A. 1910; I am not certain, it was not of enough import to me to remember his call.

XQ30. Do you know his name? A. No, I don't know his name; he was introduced to me without a card.

XQ31. He introduced himself? A. Yes, sir.

XQ32. Did he say whom he represented? A. No, he didn't.

XQ33. Did he at any time during this conversation say he represented the Modern Pen Company or A. A. Waterman Company? A. To my recollection the only reference he made was that he was selling Waterman pens.

1247 XQ34. Did he say anything about A. A. Waterman & Company? A. Not until after I had called his attention to the name—the inscription on the barrel of the pen.

XQ35. What did he say then? A. That it made no difference, was his expression; his answer I took it might have implied that his pen was just as good.

XQ36. Do you remember the exact words that he used? A. To the best of my knowledge that is what I remember of his having said.

XQ37. Please give us the exact words that he used? A. I have just before.

XQ38. No, you haven't; what you said and what he said? A. I just told you what I said and what he said.

1248 XQ39. I will ask you again to begin at the beginning of his call and say everything that he said and everything that you said? A. I can't say everything that he said and everything that I said.

XQ40. As nearly as you can remember it? A. He introduced himself—

XQ41. What did he say? A. He says I am selling Waterman pens, after greeting him, shaking hands, I remarked if he knew what had become of Mr. Hudson, who had previously called upon us in the interest of the Waterman Company, and he remarked that he himself was a new man on the territory, and then after some chatting about the fountain pen conditions

here at Delaware, and so forth, I can't remember exactly the words of our conversation between that and when he said, "Let me show you my samples of pens that I have with me;" and I consented and he displayed his assortment of pens in front of me on the show case; the next that I can remember was my discovery of the name on the pens that he was showing me and I remarked that they were not L. E. Waterman & Company's pens, and his remark to me was that that made no difference.

XQ42. You were already selling L. E. Waterman & Company pens? A. Yes, sir.

XQ43. You never had any business with the A. A. Waterman Company or the Modern Pen Company? A. I really didn't know of the company in existence. 1250

XQ44. You weren't deceived by anything that he said? A. Because I didn't take advantage of his so-called bargains, possibly.

XQ45. You knew they were A. A. Waterman Company's pens? A. After I discovered it myself.

XQ46. He didn't give you his name? A. I think he did when he introduced himself.

XQ47. Did he say he represented the Modern Pen Company? A. He possibly did sometime during his conversation before he left the store.

XQ48. You don't know whether he did or not? A. I won't say whether he did or not during his visit, but I am certain—

XQ49. I am asking you what he said; did he say he represent A. A. Waterman Co.? A. Not before my discovery of the line of pens that he handled. 1251

XQ50. Did he then? A. He possibly did before he left the store, I couldn't say.

XQ51. You are not even certain of that? A. I am not certain of the name he gave of the company he was working for, after that.

XQ52. After what? A. After my discovery of the name on the pen; he remarked they were made by A. A. Waterman after I noticed it.

1252 *Frank N. Sell*

XQ53. But he did not say who he represented? A. Yes, sir; he said he was selling Waterman pens; that means he represented them.

XQ54. Did he say that he represented any particular party? A. I can not say exactly that he did or did not.

XQ55. Do you know Wells & Hardin, the book sellers of this town? A. Yes, sir.

XQ56. Is it not a fact that they sell L. E. Waterman & Company pen? A. I do not know but I rather think they do. I have been under the impression that they do.

XQ57. L. E. Waterman & Company have a pen that is called the non-leakable, do they not? A. I think from seeing their
1253 advertisements that they have.

XQ58. And is it not a fact that the A. A. Waterman Company do not have a pen that they call the non-leakable? A. I do not know.

RE-DIRECT EXAMINATION by Mr. Raymond:

RDQ59. By what names do customers ask you for pens of the manufacture of L. E. Waterman Company? A. I should imagine the majority seeking the L. E. Waterman Company's Ideal pens ask for Waterman's pen.

RDQ60. That is your experience? A. Yes, sir, or Waterman's Ideal pen.

1254 RDQ61. Or Waterman's fountain pen? A. Yes, Waterman's fountain pen, Waterman's Ideal pen; some of them call for Ideal pens.

RDQ62. Do you have many calls simply for Ideal pens? A. No, not many; the word is not often used in asking for that certain brand.

RDQ63. Can you give a description of this salesman who called upon you? A. Not a very exact one as he was there only a short time.

RDQ64. Give me some kind of a description of him? A. If I remember correctly he was a man that would stand about possibly 5 feet 10½ to six feet, I am not certain of his height.

RDQ65. How old was he? A. I should imagine about from 30 to 32 years old.

RDQ66. How heavy? A. He would be a man not quite as heavy as you Mr. Beecher, about 165 or 170.

RDQ67. Smooth shaven? A. To my recollection he was smooth shaven.

RDQ68. Dark or light complexion? A. I believe dark.

RDQ69. Was your brother present at this time? A. My brother was present when he came into the store but he turned him over to me as I do all the buying in the stationery department.

RDQ70. What is your brother's name? A. Orrie Paul Sell.

RDQ71. Where is your brother today? A. He is at home sick. 1256

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ72. How long was he in your store? A. I don't know because I didn't get to see him when he first came in; I was busy and I don't know how long it was.

RXQ73. How long did you see him? A. From the time I met him until he left I should imagine not to exceed a half hour.

RXQ74. And what you have said is all that you can remember of that half hour's conversation? That is so, is it? A. I was just trying to think; that is all I can recollect.

1257

The signing of this deposition is hereby waived.

1258 *Donald D. Bradford*

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,
against
MODERN PEN COMPANY,
Defendant.

1259

Deposition of Donald D. Bradford and Henry R. Brink, taken pursuant to notice hereto annexed; it being however stipulated between the attorneys attending this hearing that the above depositions be taken on the 7th day of January, 1911, instead of on the 9th day of January, 1911, as set forth in said notice.

DONALD D. BRADFORD, being called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

Q1. What is your name, residence and occupation? A. D. D. Bradford, Holland, Mich.; druggist.

1260 Q2. How long have you been in that business? A. About nine years.

Q3. During what part of that time have you handled fountain pens? A. Practically all of that time except about a year in Holland.

Q4. How long have you been in Holland? A. A year and a half.

Q5. What makes of fountain pens do you carry in Holland? A. The Waterman.

Q6. By whom are the pens manufactured that you call Waterman pens? A. By L. E. Waterman Company.

Q7. How long have you carried L. E. Waterman Company pens? A. Since about Dec. 10th, 1910.

Q8. Had you handled these pens prior to that time? A. Not here, except by mail order.

Q9. How long had you known the L. E. Waterman Company pens and by what name did you know them? A. I have known them for a long time as the Waterman pen.

Q10. And when you heard the name Waterman in connection with fountain pen, what make of pen did it suggest to you? A. The L. E. Waterman Ideal.

Q11. Now, will you state in your own words what occurred in your store during the month of August, 1910? A. A salesman who stated he was the Waterman representative called and tried to sell me a line of pens but I was not interested at the time and did not buy. 1262

Q12. How did he introduce himself to you? A. As the Waterman representative. And I said another Waterman representative? That is a mistake, it was the last representative to whom I said that.

Q13. Did this representative who called on you in August, hand you any card? A. He did not.

Q14. Did he say he was representing the Modern Pen Co.? A. He did not.

Q15. Did he say he was representing A. A. Waterman & Co.? A. He did not.

Q16. State as nearly as you can what he did say. A. That was practically all with the exception that I told him we ordered Waterman pens by mail. 1263

Q17. Did he show you the line of pens? A. No he did not.

Q18. Do you know the name of this representative? A. I do not.

Q20. Can you describe him? A. He was of medium height, dark and smooth-shaven, that is all the description I can give.

Q21. How old was he? A. I should judge about thirty.

Q22. Was he slight or heavy? A. About medium.

Q23. Now will you state what occurred in Oct., 1910, in your store? A. Well, another representative stating he was the Waterman's representative called on me. I said, what another Waterman representative? His answer was no, the Waterman

1264 *Donald D. Bradford*

representative. I then told him that one of his men had called on me a couple of months before. He said, no that was not an L. E. Waterman man.

Mr. Bacon: I object to any conversation with the representative of plaintiff.

A. But stated that I was not the—

Q24. What did he say with being the sole representative in this territory?

Mr. Bacon: I object to any conversation with plaintiff representative on the ground that it is irrelevant and
1265 self-serving.

A. Said he was the sole representative of L. E. Waterman Co.

Q25. Are you positive Mr. Bradford that the man who called upon you in August did not say he was representing A. A. Waterman & Co.? A. He did not.

Q26. When you told him you were ordering Waterman pens by mail order, did he ask you whether you were handling pens made by L. E. Waterman Co. or A. A. Waterman & Co.? A. He did not.

CROSS-EXAMINATION by Mr. Bacon:

1266 XQ27. When this man called in August, he didn't get so far as to talk business with you, did he? A. No, we didn't talk business.

XQ28. He simply asked you if you were in the market for pens and you told him— A. Yes, after he had introduced himself in the manner stated before.

XQ29. He didn't show you any pens? A. He did not.

XQ30. You don't know of your own knowledge what line of pens he carried? A. I do not.

XQ31. So far as you know he might have been carrying the pens of the L. E. Waterman Co.? A. Yes, he might have.

XQ32. I suppose the whole conversation was over in a minute or two? A. Very short.

XQ33. He darted in and then went right out when he saw there was nothing doing? A. Yes.

DONALD D. BRADFORD.

HENRY R. BRINK, being called as a witness on behalf of the plaintiff, and being first duly sworn, testifies as follows:

Q1. What is your name, residence and occupation? A. H. R. Brink, Holland, Mich.; book seller and stationery. 1268

Q2. How long have you been in this business? A. About nine years.

Q3. During what part of this time have you carried fountain pens? A. The entire time, or very nearly so anyway.

Q4. What makes of fountain pens do you carry? A. Moore's Non-Leakable; Rapid Writer; Faber's Self-Filling; A. A. Waterman.

Q5. Now will you tell us in your own words what occurred in your store on or about Aug. 26, 1910? A. An agent came in.

Q6. How did he introduce himself to you? A. Selling Waterman Fountain Pen. He showed us his line, explained the merits of them and we ordered a dozen and a half I think, or two dozen of his pens to be sent in a display case. 1269

Q7. How did he describe these pens to you when he was selling them to you? A. I don't know as he explained the difference between the two companies, he said he was an A. A. Waterman.

Q8. Did he give you any instruction under which name these pens should be sold? A. Not to my knowledge.

Q9. In speaking of these pens how did he describe them, as Waterman pens or A. A. Waterman pens? A. Well, sir; I don't remember.

Q10. Had you heard of Waterman pens before? A. Oh, yes.

Q11. How did you know of Waterman pens previous to this

1270 *Henry R. Brink*

time? A. I have seen the Waterman pens and have received circulars from Waterman Co. as an inducement to give them a trial.

Q12. Was the company you had received circulars from A. A. Waterman & Co.? A. No, sir; L. E. Waterman Co.

Q13. Did you yourself know at the time when you bought these pens that the pens you were buying were different from the pens you knew as Waterman pens? A. No, I knew there was two companies.

Q14. At the time you bought these pens? A. Yes.

Q15. At the time you bought these pens, did you speak of them as Waterman pens in presence of salesman? A. I don't
1271 remember.

Q16. You understand what I mean, did you call these pens Waterman pens? A. I don't know as I gave them any name or mentioned the name.

Q17. Under what name did you try to sell these pens?

Mr. Bacon: Objected to as immaterial and not binding on the defendant.

A. Why, we sold one pen under the name of A. A. Waterman.

Q18. Did you sell any under the name of Watermen pen? A. I am not sure of that.

Q19. Did the salesman tell you these pens were different
1272 from the pens made by L. E. Waterman Co.? A. I think he said something with reference to the other company but I don't know as he gave any instructions as to the name under which these pens should be sold.

Q20. When this salesman came in to see you, are you sure he said he represented the Waterman pen? A. Yes, I am quite sure he did.

Q21. Did he hand you a card? A. I don't remember.

Q22. Can you describe the salesman? A. No, sir; I could not.

Q23. Did you get the name of the salesman on the bill which you received for these pens? A. I don't know.

Q24. Was his name Bartlett? A. I don't remember.

Q25. Now, isn't it true, Mr. Brink, that you were trying to sell these pens under the name Waterman and that the salesman who sold the pens to you gave you no instruction that you should sell them only as A. A. Waterman & Co. pens? A. I remember no conversation about that.

Q26. At the time I visited you in December, weren't you or the young lady in the store trying to sell these pens as Waterman pens? A. I guess yes.

Q27. Didn't I speak to you about it? A. Yes.

Q28. Would you have tried to sell those pens as Waterman pens if that salesman had told you to sell them only as A. A. Waterman & Co. pens? A. No, I guess not. I would have followed the instructions. Or at least investigated the meaning of that explanation. 1274

Q29. Did the salesman mention the name Modern Pen Co. to you? A. Not that I know of.

CROSS-EXAMINATION by Mr. Bacon:

XQ30. You wrote this letter to the Modern Pen Co.? A. Yes, sir.

XQ31. And got an answer, of which that is a copy? A. Yes, sir.

XQ32. You wrote this letter and mailed it on or about its date? A. As far as I remember. 1275

XQ33. And received the second letter very shortly after December 19, 1910? A. I received it the 21st.

Letter of December 15, 1910, H. R. Brink to Modern Pen Co., marked for identification Exhibit A, Jan. 7, 1911.

Letter of Dec. 19, 1910, marked Defendant's Exhibit B for identification, Jan. 7, 1911.

XQ34. When this salesman called in August, 1910, you knew of the existence of the L. E. Waterman Co. and A. A. Waterman and Co. as rival manufacturers of fountain pens? A. Yes, sir.

XQ35. This salesman told you he represented A. A. Waterman & Co.? A. I think so.

XQ36. You knew you were buying the A. A. Waterman & Co. pen? A. Yes, sir.

XQ37. You saw that name on the barrel of the pens he displayed? A. I think so.

XQ38. Did he show you any printed matter? A. I don't remember.

XQ39. You discussed with him the fact that there were two Waterman companies? A. There must have been very little said in regard to that for I don't remember the conversation.

1277 XQ40. But there was no question but what he was selling A. A. Waterman & Co. goods exclusively? A. Oh, no.

XQ41. Mr. Raymond came to see you just before you wrote this letter of Dec. 15, 1910, Exhibit A for identification? A. Yes, sir.

XQ42. Did he try to buy an A. A. Waterman pen of you? A. I don't remember—the clerk waited on him.

XQ43. Did he try to get a receipt and get you to mark it Waterman? A. Not of me.

XQ44. Did he of the clerk? A. I don't know that.

XQ45. Did he threaten you with suit if you sold these pens as Waterman pens? A. He said we were liable to have trouble.

XQ46. Did he tell you that the pens that the agent had sold
1278 you in August were being sold in New York for $.85? A. I don't remember.

XQ47. Did he tell you you were liable to get into trouble if you sold A. A. Waterman & Co. pen and that you better send them back? A. He said if we sold them as only Waterman pens we would be liable to have trouble.

XQ48. Did he advise you to send back your stock? A. Not exactly.

XQ49. What did he say about that? A. We are not after you to send these pens back. He said this—that he had bought pens at different places as Waterman pens—I think he warned us we should be careful as the manufacturers of these pens

1279

had no right to use the name Waterman, as this name could only be used by L. E. Waterman Co.

XQ50. Did he tell you that A. A. Waterman & Co. had no right to use that name? *i. e.* the name A. A. Waterman & Co.? A. I think so.

XQ51. Did he ask you to testify in this case at that time? A. Well, only in his presence.

XQ52. He asked you to make a written affidavit, didn't he? A. He wrote a paper.

XQ53. Did he tell you if you would be a witness in this case they wouldn't trouble you with any suit? A. I told him I didn't like to get into trouble, and he said he didn't want to get me into trouble only he was investigating these cases. 1280

He also mentioned the conversation with the Gerber Drug Co., on whom the agent called on the same day.

XQ54. Did he say he was investigating these matters to get evidence in this case? A. I think he said he was attorney for L. E. Waterman Co.

XQ55. What further did he say along that line? A. I don't remember.

XQ56. Did he say he had been all over the country trying to buy A. A. Waterman & Co. pen under the name of Waterman and getting a receipt to that effect? A. Yes, he said he done that.

RE-DIRECT EXAMINATION by Mr. Raymond: 1281

RDQ57. Do you remember when your clerk called you down to where I was standing in your store, at the time of my first visit? A. I heard the conversation at the same time the clerk looked at me and I walked to the front.

RDQ58. Didn't you tell me I was just the man you wanted to see about these pens, that some one had told you previously that you would have trouble if you sold them? A. Yes, sir.

RDQ59. State what you had been previously told about these pens and by whom A. The agent selling Moore's pens told me that these pens were being sold in New York as low as $.85 and

1282 *Henry R. Brink*

had trouble with the L. E. Waterman Co. I then informed him that we had written for evidence in regard to this trouble to avoid later trouble in selling them.

RDQ60. Didn't this man tell you something about a lawsuit? A. It seems to me there was an injunction was served by L. E. Waterman Co. against A. A. Waterman & Co.

RDQ61. Didn't you ask me about that injunction? A. Yes, sir.

RDQ62. What did I do? A. Showed me a copy, stating that no other company could use the name Waterman than L. E. Waterman Co.

1283 RDQ63. Didn't you then tell me you would have to send the pens back? A. I said I preferred to do that rather than have trouble.

RDQ64. What did I tell you to do? A. That you weren't as much after me to return the pens but you wanted to get this information.

RDQ65. Didn't I tell you to write to the company and find out whether you could sell the pens as Waterman pens? A. I don't remember, it is possible.

RDQ66. Didn't I tell you not to take my word for anything but to investigate the matter with the company before you sent the pens back? A. I think so.

RDQ67. Did you do that? A. Yes, sir.

1284 RDQ68. Have you a copy of the letter you sent the company? A. I think so.

RDQ69. Is that letter of Dec. 15th, the letter you sent to the company? A. I think so, I didn't look up the date, but think so.

RDQ70. Did you ask the company whether you had the right to sell the pens under the name Waterman? A. I don't remember that.

RDQ71. Now, what did you know about these two concerns at the time the salesman first called upon you? A. Why, I knew there was two companies.

RDQ72. Did you know which was the oldest concern? A. I don't think I did.

RDQ73. Had you any knowledge or information but that A. A. Waterman & Co. was the oldest and longer established concern? A. No, sir.

RDQ74. Didn't this salesman tell you that the line of pens he was handling was the genuine Waterman pen? A. He said it was the A. A. Waterman pen.

RDQ75. Didn't he say it was the genuine Waterman? A. Not to my knowledge.

RDQ76. Did he always use the initials A. A. in describing the pens to you, or did he simply say Waterman? A. I don't remember.

1286

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ77. Did you have any information that A. A. Waterman & Co. was the oldest concern? A. No, sir.

HENRY R. BRINK.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

1287

L. E. WATERMAN COMPANY,
Plaintiff,
against
MODERN PEN COMPANY,
Defendant.

Testimony on final hearing in the above entitled action taken before E. S. Douton, a Notary Public, in and for the County of Niagara, State of New York, at No. 16 Falls Street, Niagara

1288 *Arthur Cummings*

Falls, Niagara County, New York, under the rules of equity and the revised statutes, pursuant to notice hereto annexed, on the 7th day of April, 1911.

Appearances:

Walter B. Raymond, of counsel for plaintiff.
Alexander S. Bacon, solicitor for defendant.

It is stipulated by counsel that the above testimony shall be taken before E. S. Douton, Notary Public, on the 7th day of April, 1911, in the place and stead of Frederick Chormann, as specified in the notice of hearing hereto annexed.

1289

ARTHUR CUMMINGS, a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Raymond:

Q1. What is your name, residence and occupation? A. Arthur Cummings, 420 10th Street, clerk.

Q2. Are you in charge of the Snyder Cigar Store in the City of Niagara Falls? A. Yes.

Q3. How long have you carried fountain pens in that store? A. About four years.

Q4. What kind of pens have you carried? A. Onoto, Waterman, Willrite.

1290 Q5. When did you purchase the so-called Waterman pens? A. About three years ago.

Q6. What pens were these, A. A. Waterman pens or L. E. Waterman Company pens? A. I don't know.

Q7. When did you purchase the pens that you now have in stock? A. About one year ago.

Q8. Will you state what occurred at the time you purchased these pens? A. At the time he had these pens, he had three or four different lines of pens. I think J. Sandusky and Company, N. Y., was the concern he represented.

Q9. What did he say to you about these pens? A. I don't remember, I just remember that this lot referred to were the pens bought.

Q10. Did he call them Waterman pens? A. I don't remember.

Q11. Did he call them A. A. Waterman pens in speaking of them? A. I don't remember.

Q12. How did you come to buy these pens? A. They looked good to me, so as it was an every day occurrence, I purchased them.

Q13. Did you previous to that time, know of Waterman pens? A. Yes.

Q14. How did you gain your knowledge of Waterman pens? A. I carried one of them.

Q15. What kind of a pen did you carry? A. One of those self-filling pens. This is about all the description I can give you of it. 1292

Q16. Do you know how the pen was marked? A. No, I don't.

Q17. Is that the way you had any knowledge of Waterman pens? A. Only by seeing them advertised.

Q18. You mean the advertisements in the magazines? A. Yes.

Q19. You mean the big back page advertisements in magazines? A. I don't know as it was back page advertisements, I saw the advertisements in magazines.

Q20. Did you at the time you purchased these pens, think that you were buying the Waterman pens you had seen advertised? A. I don't remember now that I knew they were even marked Waterman. 1293

Q21. Didn't the man who sold you the pens call them Waterman pens? A. I can't remember.

Q22. You didn't buy them from a catalogue? A. No, right from samples.

Q23. Did he tell you under what name these pens were to be sold to the public? A. No.

Q24. Under what name did you sell them to the public? A. Well, I don't remember. I myself didn't sell any of them. I don't know under what name the other clerks sold them. None of the clerks are here now.

1294 *Arthur Cummings*

Q25. Did you always call them Waterman pens? A. No, I don't know as I have, I never had any occasion to. Don't know as I sold them.

Q26. When did you first learn that the pens that you had were not the pens advertised in magazines as Waterman's and Waterman's Ideal Fountain pens? A. About four weeks ago.

Q27. Did you up to that time think you had the pens that were advertised in all the magazines as Waterman's Ideal Fountain pen? A. Yes, I supposed so.

Q28. And you had bought the pens, thinking they were the pens that were advertised and widely known as Waterman pens? A. No.

1295 Q29. You bought them without any reference to the name? A. I don't know as there was any reference made to the name.

Q30 But you thought they were the Waterman pens you had seen advertised after you got them, didn't you? A. Yes, after, but I didn't know until some time after they were marked Waterman.

CROSS-EXAMINATION by Mr. Bacon:

XQ31. How much did these pens retail for? A. $2.50 to $5.00.

XQ32. How much do the A. A. Waterman pens retail for? A. $1.50 to $3.00.

1296 XQ33. Have they been perfectly satisfactory as far as you know? A. Yes.

It is stipulated between counsel that the signature of the witness be waived.

Joseph Louis Hebert 1297

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

against

MODERN PEN COMPANY,
Defendant. 1298

Testimony taken before Edmund L. Desaulniers, notary public, at his office, number 17 Place d'Armes Hill, in the City of Montreal, Province of Quebec, Dominion of Canada, under a Commission issued out of the above Court, dated March 10th, 1911, pursuant to an order entered and filed in said Court on March 3rd, 1911, the said testimony being taken subject to due notice to defendant's counsel on the sixteenth day of March, nineteen hundred and eleven, beginning at nine o'clock in the forenoon, which time and place was named and set by the Commissioner herein.

Appearances: 1299

Samuel S. Watson, Esq., attorney for the Plaintiff.
Alexander S. Bacon, Esq., attorney for the Defendant.

JOSEPH LOUIS HEBERT, who resides in the Town of Lachine, in the Province of Quebec, Canada, and is a stationer, aged twenty-one years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, place of residence and occupation? A. My name is Joseph Louis Hebert; I reside at the

1300 Town of Lachine, in the Province of Quebec, and I am in business as a stationer.

Q2. Where is your place of business? In what town? A. In the Town of Lachine.

Q3. And how far is that from Montreal? A. About thirteen miles.

Q4. Do you deal in fountain pens? A. Yes, sir.

Q5. How long have you been dealing in them? A. I have been handling the Waterman pen for eight years. I have been in business as a stationer for nine years.

Q6. Did you at any time buy some pens from Granger Freres? A. I did. The first lot I bought was from Granger Freres.

1301 Q7. And what kind of pens did you think you were buying?

Mr. Bacon: Objected to as immaterial. Granger Freres are not connected with the defendant, and I call for the conversation.

A. I thought I was buying the pen that I am handling now.

Q8. And what pen is that? A. The L. E. Waterman pen.

Q9. You thought you were buying? A. The best kind.

Q10. The genuine pen, and what is that? A. Of course, I did not know the difference. When people came in and asked me for Waterman pens, I found it was the best goods on the

1302 market, so I tried to buy the pen.

I deal with Granger Freres, and they told me that they handled it, so I bought a dozen of pens there, and I just found out after a while that they were not the pens that I was being asked for by my customers.

Q11. Not the pens you expected you were buying? A. No.

Q12. Do you know whether Granger Freres represented themselves to be the agents of the makers of these pens which are marked "A. A. Waterman & Co."?

Mr. Bacon: Same objection.

A. Yes. They represented themselves to be the agents, because he said if a pen got broke, they would send it to New York to be repaired, and one pen was broken and I came in to get it repaired. It was a self-feeder with a rubber attachment, and the rubber was rotten, and I came in to their store to get it fixed.

The pen was never in a condition to be sold; it was leaking; and I went in there to get it repaired. They said they would have to send it to New York, and I waited eight days, fifteen days, and three weeks, and then they told me it would cost around a dollar to have it fixed—to put a new rubber in—seventy-five cents or a dollar, I think, was the cost, so I brought it back and I have got it at home yet. It has never been fixed. 1304

Q13. How long have you been handling the genuine Waterman's Ideal Fountain Pen? A. About eight years.

Q14. And what was it that led you to be deceived by the pens which were sold to you by Granger Freres as genuine Waterman pens?

Mr. Bacon: Objected to the question as leading, suggesting to the witness that these are genuine Waterman pens.

A. After I sold a few pens of my stock of that dozen that I bought, I found that the pens were being returned to be repaired, and they were always kicking about having to repair the pens. First they put me off, and after that, when I got repairs made I had to pay for the repairs. 1305

During that time I heard that L. E. Waterman was on St. James Street, on the second floor up. They had only one room there, and that is what I found out, that the L. E. Waterman was selling at that place on St. James Street.

Q15. And was that the first time that you discovered that the pens that Granger Freres had sold you were not Waterman's Ideal Fountain Pens, when you went to St. James Street? Was that the first time you discovered it? A. I thought that there was no difference at all between A. A. Waterman and L. E. Waterman. I wanted to buy the Waterman pens first, and I

found out that Granger was keeping Waterman's pens, and I wanted the best pens, because I will buy only the best for my store.

I heard from some people that the Waterman pens were the best, and I went to Granger Freres and I asked them if they sold the Waterman pens, and they said yes, so I bought a dozen there, and I paid for them, and it was just around that time that I discovered that I was wrong—that it was only an imitation,—that there was another firm making what they called "Ideal" fountain pens, and I found out (I do not know whether it was by the telephone books or the directory), that their
1307 place was on St. James Street, and I went there to visit first. I did not do my first buying there.

I gave him my name, and the agent came to my place afterwards, and I bought for one hundred and five dollars worth then, and since then I have kept them in stock.

CROSS-EXAMINATION by Mr. Bacon:

XQ16. When did you buy this dozen of A. A. Waterman pens? What year? A. The first year I was in my store, and I have been in business nine years.

XQ17. And you have not bought any since? A. No.

XQ18. Who are Granger Freres? A. They are wholesale stationers.

1308 XQ19. In Montreal? A. In Montreal.

XQ20. Did you buy this dozen of pens eight or nine years ago in Montreal, at the store of Granger Freres? A. Yes, sir.

XQ21. What was the name of the man who sold you the pens? A. One of the Granger Freres.

XQ22. Do you know his first name? A. It was the tall brother. I am not sure of his first name.

XQ23. Give us the exact conversation that passed between you and the tall Mr. Granger?

Mr. Watson: Objected to as calling for an impossibility at this length of time.

A. When I went there first to buy pens, I was thinking—

By Mr. Bacon (interrupting):

XQ24. Never mind what you were thinking. Just relate what was said by each of you? A. I went in there to buy pens, and I said, "I heard that the Waterman pen was the best." He said, "I am handling it," so I asked him the question whether they were guaranteed, or if they broke, whether I could bring them back, and he said, "Yes," so I decided to buy a dozen, and the first pen was leaking.

XQ25. I only asked for the conversation? A. When he told me that everything was guaranteed on the pens, I decided to buy a dozen. 1310

XQ26. Did he tell you that they were A. A. Waterman pens? A. I don't remember whether he told me that they were A. A. Waterman pens, or L. E. Waterman pens. I bought thinking I was getting the best.

XQ27. Did he tell you at any time during this first conversation that these pens were made by A. A. Waterman & Company? A. I only remember in my mind that he said, "This is the Waterman pen."

XQ28. You are not willing to swear that he did not tell you that they were A. A. Waterman & Company pens?

Mr. Watson: The form of the question is objected to, as counsel well knows that that is improper. 1311

Mr. Bacon: Counsel does not know anything of the kind.

A. I cannot swear that, because I was thinking I was buying the best pen—the Waterman.

XQ29. And you do not know whether he told you that they were A. A. Waterman pens or not? A. I cannot remember.

XQ30. In this first conversation, when you bought these pens of Mr. Granger, did he tell you that he was the agent of A. A. Waterman & Company? A. I am positively sure that he told me that he was the agent for A. A. Waterman, or L. E. Waterman, or that he was the agent for the Waterman pens. He

1312 *Joseph Louis Hebert*

always told me that he was the agent, and that if there was anything wrong I could bring the pens to him, and he would have them repaired, and it was only after that that I found he did not keep his word.

XQ31. When you had the first conversation with him, when you bought the pens, did he say anything about his being agent for A. A. Waterman & Company, or was it later when you found that one of them was defective? A. When I bought the pens first, he told me that he was the agent for the pens.

XQ32. Just agent to sell? A. Agent to sell.

XQ33. Just as he sold any other goods in his store? A. I do not know whether he is the agent for any other goods.

1313

XQ34. When you brought back this defective pen, did he say that he would have it repaired? A. At first, yes.

XQ35. And then he afterwards did not do it? A. I waited three weeks, and after that he wanted to charge me seventy-five cents, and I brought the pen back home.

XQ36. And that is the reason you did not deal with him any more? A. That is the reason I did not deal with him.

XQ37. And that is the only reason that you went to St. James Street, and bought L. E. Waterman pens? A. I was trying to get the best pen. I was looking for the best pen. It was after that that I found out there was another Waterman pen.

XQ38. You have never manufactured pens? A. No.

XQ39. You do not know anything about the quality of pens, whether one is good or bad? A. I only take the word of the person who sells them to me.

1314

Mr. Bacon: I move to strike out all of this testimony on the ground that the entire transaction sworn to by the witness occurred years before the organization of this defendant, and the present firm of A. A. Waterman & Company.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ40. Did you have any trouble with more than one of these pens of this dozen? A. I had trouble in having one repaired, and I lost two.

1315

RDQ41. How did you lose them? What do you mean by losing them? A. Well, they were self fillers. In one of them the rubber was rotten, and they wanted to charge me seventy-five cents to have it repaired, and I did not have it repaired. I just brought it back, and I have it at home now.

The other two opened in the middle, and there was no thread at all to tighten them, so they would not hold together, and I could not sell them.

RDQ42. Have you found the Waterman Ideal Fountain Pens which you have handled satisfactory to your customers?

Mr. Bacon: Objected to as immaterial and impossible for this man to know.

1316

A. Yes.

By Mr. Watson:

RDQ43. You have received no complaints regarding these pens? A. Never.

RDQ44. If Granger Freres had told you that they sold Waterman pens—if they had mentioned that they sold A. A. Waterman pens, or L. E. Waterman pens, would you have known the difference? A. I would not know the difference until I was told by somebody.

RDQ45. All you knew was "Waterman pens"? A. Yes.

RDQ46. And Waterman pens in your mind meant the best? A. Yes.

1317

RDQ47. And what do you consider the best? Which ones?

Mr. Bacon: Objected to as immaterial. He is not an expert, and has nothing to show he has sold other pens excepting these two.

A. The L. E. Waterman pen.

RDQ48. Have you ever sold any other kind of pens than these two kinds you have mentioned? A. I did. I sold one that they called the cheap pen, one dollar and twenty-five cents, made by the Waterman Company. I think they called it the "Climax" pen. I bought it at Waterman's. I do not know if they made it.

1312 *Joseph Louis Hebert*

always told me that he was the agent, and that if there was anything wrong I could bring the pens to him, and he would have them repaired, and it was only after that that I found he did not keep his word.

XQ31. When you had the first conversation with him, when you bought the pens, did he say anything about his being agent for A. A. Waterman & Company, or was it later when you found that one of them was defective? A. When I bought the pens first, he told me that he was the agent for the pens.

XQ32. Just agent to sell? A. Agent to sell.

XQ33. Just as he sold any other goods in his store? A. I do not know whether he is the agent for any other goods.

1313

XQ34. When you brought back this defective pen, did he say that he would have it repaired? A. At first, yes.

XQ35. And then he afterwards did not do it? A. I waited three weeks, and after that he wanted to charge me seventy-five cents, and I brought the pen back home.

XQ36. And that is the reason you did not deal with him any more? A. That is the reason I did not deal with him.

XQ37. And that is the only reason that you went to St. James Street, and bought L. E. Waterman pens? A. I was trying to get the best pen. I was looking for the best pen. It was after that that I found out there was another Waterman pen.

XQ38. You have never manufactured pens? A. No.

XQ39. You do not know anything about the quality of pens, whether one is good or bad? A. I only take the word of the person who sells them to me.

1314

Mr. Bacon: I move to strike out all of this testimony on the ground that the entire transaction sworn to by the witness occurred years before the organization of this defendant, and the present firm of A. A. Waterman & Company.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ40. Did you have any trouble with more than one of these pens of this dozen? A. I had trouble in having one repaired, and I lost two.

1315

RDQ41. How did you lose them? What do you mean by losing them? A. Well, they were self fillers. In one of them the rubber was rotten, and they wanted to charge me seventy-five cents to have it repaired, and I did not have it repaired. I just brought it back, and I have it at home now.

The other two opened in the middle, and there was no thread at all to tighten them, so they would not hold together, and I could not sell them.

RDQ42. Have you found the Waterman Ideal Fountain Pens which you have handled satisfactory to your customers?

Mr. Bacon: Objected to as immaterial and impossible for this man to know.

1316

A. Yes.

By Mr. Watson:

RDQ43. You have received no complaints regarding these pens? A. Never.

RDQ44. If Granger Freres had told you that they sold Waterman pens—if they had mentioned that they sold A. A. Waterman pens, or L. E. Waterman pens, would you have known the difference? A. I would not know the difference until I was told by somebody.

RDQ45. All you knew was "Waterman pens"? A. Yes.

RDQ46. And Waterman pens in your mind meant the best? A. Yes.

1317

RDQ47. And what do you consider the best? Which ones?

Mr. Bacon: Objected to as immaterial. He is not an expert, and has nothing to show he has sold other pens excepting these two.

A. The L. E. Waterman pen.

RDQ48. Have you ever sold any other kind of pens than these two kinds you have mentioned? A. I did. I sold one that they called the cheap pen, one dollar and twenty-five cents, made by the Waterman Company. I think they called it the "Climax" pen. I bought it at Waterman's. I do not know if they made it.

1318

By Mr. Bacon:

RXQ49. Have you ever sold any other pens? A. Only that Climax pen.

RXQ50. And the L. E. Waterman pen? A. And the L. E. Waterman pen.

RXQ51. And you have not sold any A. A. Waterman pens since July first, 1905, that is, six years ago? A. No, not since six years ago, sure.

Mr. Bacon: I renew the motion to strike out all of this evidence on the ground that it does not relate to any transaction that occurred after the organization of this defendant, or the A. A. Waterman Company.

1319

Examination taken and reduced to writing on this sixteenth day of March, nineteen hundred and eleven, the signature of the said witness to the foregoing deposition being waived by agreement of counsel for both parties.

PAUL THEOPHILE FELIX JOUSSE, who resides in the Town of Vankleek Hill, in the Province of Ontario, Dominion of Canada, and is a watchmaker and jeweller, aged twenty-one years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

1320

Direct-examination by Mr. Watson:

Q1. Please state your name, place of residence and occupation? A. My name is Paul Theophile Felix Jousse; I reside at Vankleek Hill, in the Province of Ontario, and I am a watchmaker and jeweller by occupation.

Q2. Where is your place of business? A. In Vankleek Hill.

Q3. Do you deal in fountain pens? A. Yes.

Q4. And how long have you dealt in fountain pens? A. It must be about nine years.

Q5. And during that time what kind of fountain pens have you dealt in? A. The McLaughlin, the A. A. Waterman "Modern," and the "Ideal" Waterman.

Q6. How long have you been handling the Waterman Ideal Fountain Pen? A. About six years.

Q7. What is the name that your customers usually call for Waterman's Ideal Fountain Pen? What do they call it? A. They generally come in and ask for a Waterman pen, and when I show them the pen they ask if it is an Ideal.

Q8. Have you ever bought or dealt in A. A. Waterman & Co. fountain pens? A. Yes, sir.

Q9. Will you please state the circumstances of how you happened to deal in these pens, and how you happened to buy them? 1322
A. Certainly. I was handling the McLaughlin pen, and there were quite a few people coming in and asking for the Waterman pen.

I was hunting around to get the Waterman pen, and a stationer in town told me that Macfarlane, Sons & Hodgson, handled the Waterman pen. I wrote to them and I asked them in the letter if they handled the Waterman pen, and they answered, "Yes, they did."

Mr. Bacon: Objected to, as the letters are the best evidence.

Witness (continuing): They said they handled the "Modern" Waterman, but not the "Ideal." I bought some from them, 1323
not knowing that there were two Waterman's. I thought both pens were made by the same company.

Q10. When did you find that out, and how? A. Customers came in and asked me if I had the Waterman pen. I said "Yes," and I showed it to them. They would say it was not the Ideal, and I would say, "No, it is the 'Modern,'" and I sold some, but others would not take them at all, and after having refusals and losing a few sales, I made enquiries, and found there were two Waterman firms.

Q11. When you commenced handling the Waterman pens, did you expect to get the Waterman pens that you had seen

advertised, and which you had call for previously? A. Yes.

Q12. And what you got were not those? A. Well, not as far as I know.

Q13. Now, since you have been selling the Waterman Ideal Fountain Pens, have you found that your customers have been satisfied with them, so far as it has come to your knowledge? A. Well, I cannot say that I had any complaints at all.

CROSS-EXAMINATION by Mr. Bacon:

XQ14. How long is it since you have sold any A. A. Waterman pens? A. Between six and seven years.

1325 XQ15. And everything you have sworn to relates to a period more than six years ago? A. Yes, sir.

XQ16. You have not sold any A. A. Waterman pens at least since the first of July, 1905? A. No.

XQ17. And everything you have sworn to related to a period before July first, 1905? A. Yes, sir.

By Mr. Watson:

XQ18. You found the L. E. Waterman Ideal Fountain Pens that you have sold during all the period that you have been selling them, satisfactory to your customers, as far as you know? A. Yes, sir.

XQ19. You are still selling them? A. Yes, sir—selling more,

1326 too.

By Mr. Bacon:

XQ20. Does anybody else in your town sell the A. A. Waterman pen? A. I don't think so; not to my knowledge.

XQ21. So you have not had an opportunity of comparing the L. E. Waterman or "Ideal" fountain pen, with a really first class A. A. Waterman "Modern" fountain pen? A. I have to a certain extent, with customers coming in with the other pen, got from outside.

XQ22. You have to have a lot of L. E. Waterman pens repaired, don't you? A. We have to have a few when they let

them fall, or break them, but I can say on the average there is no complaint any other way.

XQ23. There are no L. E. Waterman's repaired, or McLaughlin's? A. I don't think there are as many.

XQ24. Just about the same? A. Just about the same so far as breaks are concerned, but there are no other causes of trouble.

By Mr. Watson:

XQ25. Do you have any A. A. Waterman pens that are unsatisfactory or defective for any reason? A. Well, we have got them coming in out of order, points broken, the same as in the other. 1328

By Mr. Bacon:

XQ26. If any fountain pen is run through a threshing machine, it is apt to get injured? A. Well, generally.

Examination taken and reduced to writing on this sixteenth day of March, nineteen hundred and eleven, the signature of the said witness to the foregoing deposition being waived by agreement of counsel for both parties.

WILLIAM FOSTER BROWN, who resides in the City of Montreal, Province of Quebec, Dominion of Canada, and is a book seller and stationer, aged twenty-one years and upwards, 1329 being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, place of residence and occupation? A. My name is William Foster Brown; I reside in Montreal, and I am a book seller and stationer.

Q2. Where is your place of business? A. 432 St. Catherine Street, West Montreal.

Q3. How long have you been in the stationery business? A. In my own behalf since eighteen hundred and eighty-nine—twenty-two years.

Q4. All of the time in Montreal? A. All of the time in Montreal.

Q5. Have you handled and sold fountain pens A. Yes, sir.

Q6. And how long have you sold fountain pens? A. I will have to ask a question about that myself. I sold fountain pens ever since they were made, that is, in the old days of the McKinnon fountain pen. That was the first one, but how long the Waterman pen has been on the market I do not know.

1331 I sold the first Waterman pen that was sold in Montreal. That was in eighteen hundred and ninety or eighteen hundred and ninety-one. I do not know if that time is correct or not. That is the time I have in my head.

Q7. And what kind or makes of fountain pens have you dealt in? A. Since the Waterman?

Q8. At any time? A. Oh, the McKinnon pen; that was the first fountain pen made; and there was the L. E. Waterman fountain pen, and the A. A. Waterman fountain pen, and the Sterling fountain pen, and then the Parker fountain pen, and others.

Q9. And you began to sell the Waterman fountain pen "Ideal" about twenty years ago A. It would be all of that.

Q10. And since that time have you sold the Waterman Ideal
1332 fountain pen? A. I have always had them in stock.

Q11. What is the name by which your customers usually call for Waterman's Ideal fountain pen? A. The Waterman fountain pen. "Have you got Waterman's fountain pen?"

Q12. And how long has that been the fact? A. Well, it has always been the fact, because there never was any other pen but the Waterman fountain pen when they first came out.

Q13. And that is so today? They ask for the Waterman pen? A. That is so today. There was no other Waterman fountain pen on the market, and naturally they asked for the Waterman fountain pen.

Q14. And that has been the fact since the A. A. Waterman fountain pen has been on the market also, has it not? A. Oh, yes.

Q15. Did it ever come to your knowledge that a person or customer came in to your store, and asked for a Waterman fountain pen, and expected to get A. A. Waterman pens?

Mr. Bacon: Objected to, as this witness cannot tell what expectations were in the mind of the customer.

A. No.

Q16. None of these customers in any way conveyed to your mind, when asking for a Waterman fountain pen, that they expected to get an A. A. Waterman pen? A. Well, hold on a 1334
moment. I take the same ground as this gentleman, Col. Bacon. I do not know what the customer is going to ask for. I do not know what is in his mind when he comes in to ask. I know what I am going to sell. If a man comes in and asks for a Waterman pen, I sell him an L. E. Waterman Ideal fountain pen. If he wants the contrary, he will ask me for an A. A. Waterman pen.

Q17. And in asking you for a Waterman fountain pen, and you showing him a Waterman Ideal fountain pen, made by the L. E. Waterman Company, did any customer ever give you to understand that he expected an A. A. Waterman pen when he asked for a Waterman fountain pen? A. No.

Q18. Have you found the Waterman Ideal fountain pen 1335
prove generally satisfactory to your customers, so far as the matter has come to your knowledge?

Mr. Bacon: Objected to as immaterial, irrelevant and incompetent.

A. Yes.

CROSS-EXAMINED by Mr. Bacon:

XQ19. Is there an L. E. Waterman factory in Montreal? A. Not in Montreal, not to my knowledge.

XQ20. Where is it, do you know? A. St. Lambert's.

XQ21. Where is that? A. Across the river from here, in another municipality.

XQ22. How far from here? A. I suppose it is four miles—four or five miles.

XQ23. Do you carry the A. A. Waterman & Company fountain pen? A. Not now.

XQ24. How long is it since you have carried them? A. Oh, it must be about seven or eight years.

XQ25. You have not carried any A. A. Waterman & Company pens since July first, nineteen hundred and five, six years ago? A. You see, I have been sworn to state facts, and I cannot
1337 say that that is the fact. It is a good long while ago.

XQ26. It is at least six years ago? A. At least six or seven years.

XQ27. And did you sell many of them before that? A. They were put on the market for sale. We were trying to introduce them as the A. A. Waterman pen, and we found they were not satisfactory, and we dropped them.

XQ28. And when was that? When you first took them up? A. When they were first put on the market.

XQ29. About eighteen hundred and ninety-eight? A. A. A. Waterman came to us first with them.

XQ30. And you think it was when they were first put on the market? A. Well, on his first trip to Montreal we took
1338 stock of them.

XQ31. And how long did you carry them? A. I do not think we carried them for more than three years.

XQ32. Well, it may be that you have not carried any since nineteen hundred and two? A. Well, it might be. I have not carried them in my present store, and I dropped them before I left my old store. It might have been nineteen hundred and two. Time goes by pretty quickly.

XQ33. If a man owned an A. A. Waterman pen, he would always speak of it as a Waterman pen, would he not? A. No.

XQ34. You never had anybody come to you, and try to sell you A. A. Waterman pens, and call them anything else except

A. A. Waterman pens? A. Well, I never dealt with anyone but A. A. Waterman himself.

XQ35. And he always carefully designated his pens as the A. A. Waterman pen? A. Yes, the A. A. Waterman pen.

XQ36. And the fact that there is an L. E. Waterman factory right here makes that pen the principal pen sold in Montreal, does it not? A. It does not follow. It was the principal pen sold in Montreal before the factory was here at all.

XQ37. The L. E. Waterman pen? A. Yes, the L. E. Waterman pen.

XQ38. You never had anything to do with the manufacture of pens? A. No, sir.

1340

XQ39. You do not call yourself a pen expert? A. No, sir.

XQ40. And you have not compared the A. A. Waterman pen manufactured since July first, nineteen hundred and five, with any L. E. Waterman pens manufactured since that date? A. I cannot say that I have not, because these pens have been brought in to me to be repaired. If you could show me a pen manufactured since that date, I could tell you.

XQ41. You don't remember? A. I don't remember. It may be the same pen manufactured now as since I was in the business.

XQ42. All kinds of pens come to you for repairs? A. Yes.

XQ43. All kinds of pens are subject to get out of order, and need repairing? A. Yes, sir. All things human do the same.

1341

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ44. What was the reason that you discontinued the sale of A. A. Waterman & Company fountain pens? A. Because it was not a good pen.

RDQ45. Were there any cases of people being deceived or confused by the marks of these pens? A. Yes, sir.

RDQ46. And do you have pens offered to you now, which are marked "A. A. Waterman & Company, New York," and have people state to you that they believed they had a genuine Waterman Ideal fountain pen? A. Well, I have had customers

come into the store with pens to be repaired. I would say to them, "I do not repair these pens, because they are not L. E. Waterman Ideal fountain pens."

Their reply would be, "Now, that is very odd. I bought them for a Waterman fountain pen, expecting to be getting an Ideal fountain pen."

I said, "I can't do it. The Ideal Waterman fountain pen people wont repair these, and I cannot get them repaired here. I will have to send these pens to Boston." That has happened many, many times.

By Mr. Bacon:

1343 RDQ47. When? How late? A. Last week.

RDQ48. Can you give me the name of any person who said that? A. No, I could not offhand. I would have to look up my documents and things, to see when I sent it to the Boston house to get it fixed.

RDQ49. And all these A. A. Waterman pens, concerning which you have testified, you have sent to Boston to be repaired? A. Yes. There is no other place for them to be repaired.

RDQ50. And if it be a fact that there has been no Boston place to repair these pens in over six years, you have not had such an incident occur within six years? A. Yes, I had, too, and there is a place (I wont say whether it is Boston or New York), but there is a place where they repair A. A. Waterman pens.

1344 RDQ51. Where? A. It is either by the Sterling people in New York, or the Sterling people in Boston.

RDQ52. Well, have you sent any to the Sterling people within what time? A. I certainly sent them there within a month, I think, to the Sterling people. It used to be the old Sterling, but now it is the Davidson, I think.

RDQ53. What is their address? A. I could not tell you that. I think it is Boston. The office is down on State Street. I was there several years ago, when they had their office in Boston.

The customers come to me personally for to have their pens repaired, and the clerk sends the pens off to be repaired; but they are generally brought to me to be examined to see what can be done with the pens.

RDQ54. Well, really what you have been testifying to, is what others in your employ have done, and the conversations that you have spoken of are conversations between the customer and some of your employees? A. No. The conversation would be between the customer and myself, because the employee would not know anything about it.

RDQ55. Would you want to modify your testimony, Mr. Brown, if I should tell you that for over six years the A. A. Waterman factory have had no place for repairing these pens in Boston?

Witness: Where have they got it?

Counsel: In New York, 22 Thames Street? 1346

A. I know we sent the pens some place.

RDQ56. But you do not say that you sent them to Boston? A. It is like this. I say these pens come in to be repaired. The original office was in Boston, was it not?

RDQ57. Not within ten or twelve years, I do not think? A. I have been selling the pens since eighteen hundred and ninety-two. That is a good deal more than ten or twelve years.

RDQ58. I do not think there has been a Boston factory or office since about nineteen hundred A. That is ten years ago.

RDQ59. That is eleven years ago? A. That is the time as you say when I used to buy the pens. That is when I used to get them, and we got them in, I do not say often and often, but I know they came in, because the pens were pretty generally sold all over the country, and if a man is in a certain town, and his 1347 pen gets out of order, he goes into a store to have it repaired. He does not wait to go to the store where he bought the pen, because he is travelling. He is away from home.

RDQ60. And if an A. A. Waterman pen comes to be repaired, you do not take it? A. I wont take it now.

RDQ61. For how many years? A. When I said, "I do not take it," I meant now. I said a little while ago that I took an A. A. Waterman pen to be repaired not later than last week.

RDQ62. Why? Have you changed your methods within the week? A. No, I have not changed my methods within a week. I have changed my methods within the last minute.

1348 *William Foster Brown*

RDQ63. Why would you take one a week ago, when you would not take one now? A. Because I would not want to have anything to do with the A. A. Waterman pen now. I have changed my mind since beginning my evidence.

RDQ64. Why have you changed your mind since beginning your evidence? A. I do not think it is a profitable business to be in. Your questions have changed my mind.

RDQ65. If I should tell you that the A. A. Waterman Company manufacture every part of their pen, including the penholder, and the pen points, out of the very best material that can be obtained, by workmen paid the highest wages, and should also tell you that the L. E. Waterman Company do not make
1349 their pens at all, but merely assemble their parts—get their parts from different people—would you change your mind again? A. To that I will reply that I knew the L. E. Waterman pen when they went into an office, and had only one man in their employ, when A. A. Waterman was their traveller, the first traveller that they had on the road.

I do not think that he would ever have been in the fountain pen business if he had not the name of Waterman. He had the name A. A. Waterman, and then he went into the business, and then he bankrupted the business.

Then he went into another company, and bankrupted that business. Whether A. A. Waterman himself is dead or alive today, or in any business, personally I do not know.

1350 RDQ66. Don't you know that Mr. A. A. Waterman was the inventor of the pens? A. No, indeed, I do not.

RDQ67. Don't you know that he took out a number of patents of his own invention, and that the A. A. Waterman pens, under the present patents, are very different from what they were in eighteen hundred and ninety-eight and nineteen hundred? A. Well, I am not conversant with patents. He took out one patent that he thought was going to be a great improvement, but I think it ruined his pen.

RDQ68. When? A. That was when he invented the pen, with one joint slipping into the other. The joint was altogether too weak, and if it fell it broke.

RDQ69. That pen was abandoned many years ago? A. I cannot say, but still it is on the market today.

RDQ70. Have you known one of this kind of pens to be sold within the last five or six years? A. I do not sell them. I cannot answer that question.

RDQ71. You never heard of one being sold? A. I do not know anything about that. If you asked Granger Freres, of Montreal, they would know. They are the agents of the A. A. Waterman pen.

RDQ72. But you do not know? A. I do not sell them, so I cannot say personally.

Examination taken and reduced to writing, on this sixteenth day of March, nineteen hundred and eleven, the signature of the said witness being waived by agreement of counsel for both parties. 1352

GEORGE J. BONENFANT, who resides in the City of Montreal, Province of Quebec, Dominion of Canada, and who is a dealer in tobaccos, candies and stationery, aged twenty-one years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows: 1353

Direct-examination by Mr. Watson:

Q1. Please state your name, residence and occupation? A. My name is George J. Bonenfant; I reside at 64 Beaver Hall Hill, in the City of Montreal, and I deal in tobaccos, candies and stationery.

Q2. Your place of business is in Montreal? A. Yes, 328 Dorchester Street, west.

Q3. And do you handle and sell fountain pens? A. I do.

Q4. How long have you handled fountain pens? A. Something like three and a half years.

Q5. Now, what kind of fountain pens do you handle at present? A. A. A. Waterman.

Q6. How long have you handled A. A. Waterman fountain pens? A. That is the only pen I ever handled.

Q7. Have you ever handled Waterman's Ideal fountain pens? A. No, sir.

Q8. Will you please state the circumstances of how and where you bought the A. A. Waterman fountain pens? A. Well, just at the time that I put in fountain pens—it would be about three and a half years ago, it may be more or less—Warwick Brothers and Rutter, of Toronto, had their representative come in to
1355 me, and proposed that I should sell fountain pens, seeing that I was selling stationery. When I only knew about one Waterman pen, I could not tell exactly now whether he told me it was the L. E. Waterman or what it was, but he told me it was the Waterman pen, and as I only knew of one Waterman pen I bought it, and I sold the pens for real Waterman pens until I found out different.

Q9. When did you find out different? A. Oh, some fifteen or eighteen months afterwards, when a pen was brought in to me for repairs, and I brought it to L. E. Waterman & Company, and they refused to repair it. That was the first time I woke up to the fact.

Q10. You had seen the Waterman Ideal fountain pens generally advertised before you put in this stock of pens? A. Yes,
1356 sir.

Q11. And when you bought these pens, did you think you were buying the Waterman Ideal fountain pen? A. I was told that this was a special, put up specially for Warwick Brothers & Rutter, of Toronto. This pen is called the "Lincoln."

I was left under the impression that I had the real Waterman pen, put up for a special firm in Canada here.

Q12. And you were given to understand that these pens were made by the same people who made the Waterman Ideal Fountain pen? A. No, I will not say that; I will not say I was told, but I was left under the impression that it was the L. E. Waterman pen, the only pen that I knew of. I was never told it was a different concern.

CROSS-EXAMINATION by Mr. Bacon:

XQ13. Do you sell any other pens except the Lincoln? A. No, sir.

XQ14. This Lincoln pen does not have A. A. Waterman & Company's name on it at all, does it?

Witness: On the pen?

Counsel: Yes.

A. Yes.

XQ15. It is the "Lincoln pen manufactured by A. A. Waterman & Company"? A. Yes.

XQ16. And do you know who the representative of Warwick Brothers & Rutter was? A. Well, I do not quite remember his 1358
name.

XQ17. Do you remember his description? A. Yes, very much.

XQ18. Can you describe him? A. Yes. He is a short fellow, slim, dark complexion, dark hair—a young fellow I should judge about twenty-five or twenty-eight years of age.

XQ19. Did he give you a bill, or any advertising matter, when he sold the pens to you? A. No advertising matter whatsoever. The bill came along as "3 dozen Waterman pens, "Lincoln," so much.

XQ20. Well, the bill had A. A. Waterman & Company on it? A. No, sir, "Lincoln" pens. There was no mention of A. A. 1359
Waterman & Company at that time, because I would have found out before.

XQ21. Was not the name of A. A. Waterman & Company on the pen itself? A. Yes. I said so before.

XQ22. And you saw that the moment you got it? A. Not necessarily. I found out afterwards.

XQ23. How long afterwards? A. When my attention was called to it, when I brought an A. A. Waterman pen to L. E. Waterman for repairs.

XQ24. Well, how long had you carried the pens without seeing the name of A. A. Waterman & Company on them? A. Well, as I am telling you, about fifteen or eighteen months.

1360 *George J. Boncnfant*

XQ25. Can you tell us the conversation you had with the representative of Warwick Brothers & Rutter, when he first sold the pen to you? A. I believe I have said enough about that. I was told it was a special pen put up for Warwick Brothers & Rutter, of Toronto.

XQ26. Did he not tell you it was made by A. A. Waterman & Company? A. No, sir.

XQ27. Are you willing to swear that he did not? A. I believe I have taken my oath.

XQ28. Is your memory sufficiently accurate during those years to know that he did not say that it was the A. A. Waterman &
1361 Company people who had made it? A. I said before that I would not swear that he said it was the L. E. Waterman Company, but he did not say it was the A. A. Waterman Company.

XQ29. Well, are you sure of that? A. Well, I should be when I take my oath.

XQ30. Did he give you his card?

Witness: His card in reference to—

Counsel: His business card?

A. Well, I knew him before. I had bought from the man before. He did not have to give me his card every time he called on me.

XQ31. That is the first time you had ever bought any stationery from him? A. No, I had a stationery business before that. I had a stationery business before I bought the pens. He in-
1362 duced me to go into dealing in fountain pens, on account of my doing a stationery business.

XQ32. Well, now, will you give us the whole conversation, as nearly as you can remember, when he first sold you the pens? A. Well, the conversation was this, that I might as well handle pens so long as I was in the stationery business, although it was on a small scale, and he gave me the explanation that this pen, the Waterman pen, was put up under the name of "Lincoln," as a speciality for Warwick Brothers & Rutter, of Toronto, and he guaranteed that they were the same pen.

XQ33. Did these pens come in little boxes? A. Yes, all separate. I believe I have the empty boxes at the store at the present time.

XQ34. And those boxes had printed matter on them? A. es.

XQ35. And very plainly on the outside of the box it states that ey are manufactured by A. A. Waterman & Company? A. ell, I could not say yes or no. I believe Warwick Brothers & utter had their own advertising on the box.

XQ36. Will you produce one of those boxes? A. I could, s, sir. I have some of the empty boxes at the store, I be- ve.

XQ37. You will do so today? A. I will do so today, yes.

XQ38. About how often does that representative come to see u? A. Well, he has not been near me since.

1364

XQ39. But you have kept selling them ever since? A. Cer- inly; I have got to get rid of them.

XQ40. And they are wholly satisfactory? A. No.

XQ41. How many did you buy? A. Three dozen.

XQ42. And you never bought any since? A. No.

XQ43. And are those the only pens that you sold? A. The ly pen.

XQ44. And in three years and a half you have not sold the ree dozen pens? A. No, I have not. I sold some of them hen I could talk to a client, and tell him that that was "the pen." fter I found out it was not, I could not have the nerve to tell a an that it was "the pen."

XQ45. Well, could you not have the nerve to tell him it was a Lincoln" pen? A. I did not have to tell him that. He could e it for himself. That is what they told me afterwards. They id I was asleep.

1365

XQ46. Didn't you know that the Lincoln pen is a cheap grade f pen, that is sold under that name simply because it has a ery cheap price, and is not recommended as the best pen?

Witness: Known as cheap pens?

Counsel: Yes.

A. They must have robbed me, then.

XQ47. How much do you sell them for? A. $1.50, $2.50, 3.00, $3.50, $4.00 and $4.50.

XQ48. Those $4.50 pens are decorated on the outside? A. Not at all, they are plain. I never got a decorated pen from Warwick Brothers.

XQ49. And you say that this representative has not seen you since? A. Not since, not,—not since the time I have discovered that the pen was not the one I supposed I was buying. I saw him afterwards, but he never told me—he never put me wise; but from the time I found out that the pen I was selling was not the pen manufactured by the real Waterman people I have not seen him.

XQ50. By whom do you mean the real Waterman pen? A.
1367 I only knew of one Waterman, and that was L. E., but I did not know the initials then. If I did I would have found out before. I was under the impression that that was the object. I was looking for the Ideal pen. That was the time he told me that this pen was put up specially for these people, being their own representatives for Canada.

XQ51. Did he tell you who put them up? A. He did not tell me it was A. A. Waterman or L. E. Waterman. He told me it was the pen put up for them specially.

XQ52. Then, he did not designate between the two? A. No, no.

XQ53. You never have had any communication direct or indirect with the Modern Pen Company? A. No, sir.

XQ54. Or A. A. Waterman & Company? A. No, sir.

1368 XQ55. And you never had any representative of A. A. Waterman & Company, or the Modern Pen Company, call on you? A. No, sir.

XQ56. You do not know anything about them directly or indirectly? A. Indirectly I do.

XQ57. How? A. When I found out that A. A. Waterman & Company were not the people I was supposed to have the pen from. That is indirectly, I believe.

XQ58. Then, have you ever handled the "Modern" pens, so-called? A. No, sir.

XQ59. Manufactured by A. A. Waterman & Company? A. No.

XQ60. Their high grade pens? A. No, sir.

XQ61. Have you ever handled the self-filling pen? A. No, sir.

XQ62. These Lincoln pens are not self-filling? A. No, sir.

XQ63. They are not middle joint? A. I do not quite understand what you mean by "middle joint."

XQ64. Well, will you go to your store and produce here the original first bill for these pens that you bought? A. I do not know if I could do that.

XQ65. Will you produce the box? A. I will produce the box. I am positive I have that.

XQ66. Each pen has a box? A. Yes, under separate cover. 1370

XQ67. And will you produce that? A. I will.

XQ68. I presume it was a bill of Warwick Brothers & Rutter? A. The first and only bill that I received was under the heading of Warwick Brothers & Rutter, and I think it billed so many Lincoln Waterman pens.

The box referred to by the witness Bonenfant is produced and offered in evidence by the defendant, together with the printed "Hints to users," and these are marked Defendant's Exhibits "F" and "G" respectively.

Mr. Watson: I object to the production of these exhibits as immaterial and irrelevant.

Examination taken and reduced to writing, on this sixteenth day of March, nineteen hundred and eleven, the signature of the said witness being waived by agreement of counsel for both parties. 1371

1372 *Arthur Edward Bennett*

ARTHUR EDWARD BENNETT, who resides in the City of Montreal, Province of Quebec, Dominion of Canada, and is a clerk, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, residence and occupation? A. my name is Arthur Edward Bennett; I am a clerk, and I reside here in Montreal.

Q2. What is your business, Mr. Bennett? A. Well, I am with the James Coristine Company, fur manufacturers.

1373 Q3. You had some transactions recently with Granger Freres, in purchasing a fountain pen. Will you please relate what took place at that time? A. In the first instance I purchased a Sterling fountain pen, but I was not satisfied with it, so I returned to the store—

Mr. Bacon: Objected to this evidence as irrelevant, immaterial and incompetent, Granger Freres not being legally connected in any way with the defendant.

Witness (continuing): I returned to the store, and expressed my desire to purchase a Waterman fountain pen. I was shown two pens, and I believed them to be the Waterman fountain pens.

1374 One I was told was an improvement upon the other, inasmuch as it unscrewed in the middle, and had other advantages, which made it the modern Waterman fountain pen.

I thought it a little funny that there should be two kinds of pens, and I mentioned this to the salesman at the store, and he told me that they were the same firm, and the same pen, but one was an improvement upon the other. The old fashioned type unscrewed near the nib, but the modern unscrewed in the middle, and for the reason that one's fingers would not be stained, that was an improvement.

Q4. Did you buy either one of these pens? A. I bought the old fashioned type, which I believe to be the only one, as a matter of fact.

Q5. And was that a Waterman Ideal fountain pen that you purchased? A. In the end, yes.

Q6. And the pen that had the middle joint, which the salesman called the "Modern" pen, what did the salesman say to you regarding the makers of these two pens? A. That they were the same firm, one operating in New York, and the other in Montreal, Canada; one selling pens under the name of A. A. Waterman & Company, and the other selling pens under the name of Waterman, but the initials I do not recollect.

Q. And the pen that had the middle joint was the A. A. Waterman pen? A. Yes. That was the improved one.

Q7. And the salesman told you that these concerns were the same, one operated in New York, and the other in Montreal, and one name was used in New York, and the other name was used in Canada? A. Precisely. 1376

CROSS-EXAMINATION by Mr. Bacon:

XQ8. He did not tell you, did he, that the New York firm was A. A. Waterman & Company? A. Yes, sir.

XQ9. And that the Canadian was L. E. Waterman & Company? A. I could not be sure about these initials, but they were the same firm. They were the same people, but one operated in New York, and the other in Montreal.

XQ10. You remember that he told you that one of them was an A. A. Waterman & Company pen? A. Oh, yes, most decidedly, because I went to the Waterman store and queried it when I wanted to change the nib. It was not exactly to my satisfaction, so I went to the store, and they explained this to me. 1377

XQ11. To what store? A. To the Waterman store on St. Francis Xavier Street (Montreal).

XQ12. And there they told you what? A. Well, I told the story to them, and asked the question whether there were actually two firms manufacturing Waterman pens, and they said no.

XQ13. Do you know the name of the salesman at Granger Freres? A. No. I had never seen him before in my life.

XQ14. Have you given us the exact conversation? A. Precisely.

XQ15. Repeat it, will you? A. In the first place I went to the store, and I bought a Sterling fountain pen. I was not satisfied with it, so I expressed my desire to buy a Waterman fountain pen, and he showed me two kinds of Waterman fountain pens, one supposed to be an improvement upon the other for the reason that it unscrewed in the middle—an improvement upon the old fashioned type which unscrewed near the nib, so as not to soil your fingers, or anything of that description.

He mentioned these improvements, and he mentioned that
1379 they were the same firm, one operating in America, and the other in Montreal, Canada.

I thought it was rather curious, so he said they were absolutely the same firm, only that one pen was an improvement upon the other. They were the same people.

XQ16. And did he say that the New York firm was A. A. Waterman & Company? A. A. A. Waterman & Company? Well, yes, he did. He actually said that.

XQ17. Did he say one of the pens was the "Ideal," and the other was the "Modern"? A. He said one was the "Modern" pen for the reason of the improvement.

XQ18. Did he call the other the "Ideal"? A. No, he did not call it the "Ideal." He called one the "Modern" pen, which was the improved pen over the other one.

1380 XQ19. And what you actually did buy was an Ideal Waterman pen? A. In the end, yes.

XQ20. And then Granger Freres sell both kinds, do they? A. Oh, yes.

XQ21. But you have no way that you can identify the man that you say sold you this pen? A. I could identify him, most decidedly.

XQ22. You cannot give his name? A. No. It was simply a matter of a purchase.

XQ23. How long ago was this? A. You see, in the first place I purchased the pen the day before I went into the hospital,

and that would be the eleventh of January of this year. I came out of the hospital on the fourteenth of February. I would not be sure about that date, but at all events I got this Ideal fountain pen about two or three days afterwards.

XQ24. When you were just out of the hospital? A. Yes.

XQ25. You were pretty sick then, were you? A. Yes.

XQ26. What were you in the hospital for? A. I was in the hospital for an operation for an ulcerated and perforated stomach.

XQ27. You were pretty sick when you bought the pen? A. Oh, no.

XQ28. That was two or three days after you got out of the 1382
hospital?

Witness: When I bought the Ideal?

Counsel: When you bought the Ideal?

A. I was jolly well, then.

XQ29. And that was two or three days after you got out of the hospital? A. Yes.

XQ30. And you are absolutely certain that this salesman, whoever he was, told you that it was the same people in New York that manufactured the "Modern," that manufactured the "Ideal" in Canada? A. Yes.

XQ31. You could not be mistaken about that? A. I could not be mistaken. I am sure I am not mistaken about that.

XQ32. Will you go around to Granger Freres, and find out 1383
the man who told you this?

Mr. Watson: No, he won't.

By Mr. Bacon:

XQ33. I ask you again if you are willing to go to Granger Freres, and identify the man who sold you this Ideal pen? A. Of course, I am not in a legal position to say. Mr. Watson says no.

XQ34. If it was not for what he has just said, you would have answered "Yes," would you? A. Well, I don't know that I should. I know what I say is perfectly true.

1384 *Arthur Edward Bennett*

XQ35. And you are not willing to give us any information that will permit us to identify the man who told you this, so that we can corroborate it or disprove it by him? A. If the man comes here, most decidedly I would say that was the man.

XQ36. How can we know who he is? You do not give his name? A. I can give you the dates. I do not give you his name for the simple reason that I do not know it. I only know that he sold me the pen, and apart from that he is no friend of mine, and I had never seen him before, and have never seen him since.

1385 XQ37. And you are not willing to go to Granger Freres to find out his name, and come back here and testify to who he was? A. No.

XQ38. You are not willing to do that? A. No.

By Mr. Watson:

XQ39. Can you give a general description of this man, as best you remember? A. Yes. He is rather thin. Well, I should imagine he would be about twenty-five years of age, light hair, I think, about five feet five or six inches tall, so far as I remember.

By Mr. Bacon:

XQ40. That is all the description you can give? A. Yes.

1386 XQ41. How many salesmen are there in Granger Freres? A. I really could not tell you. I do not know.

XQ42. Is it a large store? A. Fairly. I have only been in it twice, you know.

XQ43. In the two days, you could see whether it was large or small? A. It seemed to be quite a fair store.

XQ44. A good many salesmen? A. I only saw one. The others were girls, so far as I could see. I did not take much interest in anything but buying the fountain pen.

XQ45. You do not know how many salesmen they have? A. No, I do not.

XQ46. Where is Granger Freres' place? A. On Notre Dame Street, by Notre Dame Church. It is on the north corner of Notre Dame Street, and the square.

Examination taken and reduced to writing, on this sixteenth day of March, nineteen hundred and eleven, the signature of the said witness being waived by agreement of counsel for both parties.

It being now twelve-thirty of the clock, the commission adjourned to half past two of this clock in the afternoon.

1388

The commission reconvened at 2:30 o'clock P. M.

Mr. Bacon: Before we swear the next witness, I want to make a motion. I move to strike out the evidence of the last witness, Bennett, on the ground that it is irrelevant, immaterial and incompetent, and especially on the ground that Granger Freres are not agents of the defendant, except in the sense that they buy pens of them, and sell them again, just as they buy pens from the plaintiff and sell them again.

I ask Mr. Watson to waive the formality of an order, and all technicalities, and now and here, before this Ref- 1389
eree, take the testimony of Joseph O. Pineault, on the part of the defendant, and state that during the recess for lunch I have visited the retail store of Granger Freres, and find that in that store they employ fifty-six employees, twenty-two females and thirty-four males; that the store is about seventy-five feet by sixty feet, four stories and basement, and that Mr. Joseph O. Pineault seems to correspond more than any other person to the description given by the witness Bennett.

I make this request to take his testimony, and also the testimony of Mr. Alphonse Auguste Granger, the

1390 *James Southerland*

partner in charge of this retail store, so as to save another trip to Montreal.

Mr. Watson: I state on the record that it is entirely irregular for the defendant to introduce any testimony prior to the time plaintiff has closed its testimony in chief, and as we have no notice of this witness prior to this time, and particularly on the ground of the irregularity of the proceeding, we decline to interrupt the conduct of this testimony for the purpose counsel for defendant requests.

1391 JAMES SOUTHERLAND, who resides at Montreal, Canada, and is in the stationery business, aged twenty-one years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, place of business and occupation? A. My name is James Southerland, and I reside at 2359 Mance Street, in the City of Montreal, Canada. I am manager of C. F. Dawson, limited.

Q2. What is Mr. Dawson's business? A. Manufacturing stationer.

Q3. And where is his place of business? A. 239-241 Notre Dame Street, West, Montreal, Canada.

1392 Q4. How long have you been connected with Mr. Dawson? A. For the past six years.

Q5. And how long have you been in the stationery business? A. Eighteen years.

Q6. During what part of this time have you been handling and selling fountain pens? A. For eighteen years.

Q7. And have you during this period been generally familiar with the fountain pens on the market? A. Yes, I think I have.

Q8. During this period what fountain pens have you handled and sold? A. I have sold the L. E. Waterman and the Sterling, principally.

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Q9. How long have you been selling the L. E. Waterman Ideal fountain pen? A. Well, I should say about twelve years, as near as I can recollect.

Q10. When customers come in and ask for Waterman's Ideal fountain pen, what do they usually call for? A. Waterman's fountain pen.

Q11. And when customers called for Waterman's fountain pen, to your knowledge have you ever discovered that they expected to buy any other kind than Waterman's Ideal fountain pen?

Mr. Bacon: Objected to as impossible to be answered by this witness.

1394

Mr. Watson: I said within his knowledge.

A. I think they generally mean L. E. Waterman's pen when they ask for Waterman's fountain pen.

Q12. So far as your knowledge goes, what is the name by which Waterman's Ideal fountain pens are known among the trade and public? A. Waterman pens.

Q13. And have you found in your experience, so far as the matter has come to your personal knowledge, that the Waterman Ideal fountain pen has generally given satisfaction to your customers? A. Entirely.

Mr. Bacon: Objected to as impossible for this witness to know.

1395

CROSS-EXAMINATION by Mr. Bacon:

XQ14. Have you ever handled the A. A. Waterman & Company pen? A. No, sir.

XQ15. You do not know anything about it? A. I know there is an A. A. Waterman pen on the market, but I do not know the pen.

XQ16. You never had occasion to compare it with the L. E. Waterman pen? A. I have had them brought to me for repairs.

XQ17. That is all? A. Yes.

XQ18. All kinds of pens have to be repaired? A. Certainly.

XQ19. And if a man had an A. A. Waterman pen, he would be as apt to call it a Waterman pen as anything else, would he not? A. I suppose he would, yes.

By Mr. Watson:

XQ20. And when he called it a Waterman pen, he called it so because he thought it was an Ideal Waterman fountain pen? A. Yes. I do not think they would know the difference. The ordinary customer comes into the store, and asks for a Waterman
1397 pen.

XQ21. And you personally have had a great many people come into your store, with a pen marked A. A. Waterman & Company, and tell you that they thought it was a genuine Waterman Ideal fountain pen? A. Yes, I have.

By Mr. Bacon:

XQ22. Can you name any person that has ever told you that the A. A. Waterman & Company pen that they had was an Ideal fountain pen? A. Well, I cannot recollect any particular man, but I can recollect this, that there have been customers come to me with an A. A. Waterman pen to have it repaired. I would look at the pen, and say, "No, I cannot repair it, as we only
1398 handle the L. E. Waterman pen." The customer would say, "That is funny. That was sold to me as an Ideal fountain pen."

XQ23. They are all marked "Modern," are they not? A. Yes, but the ordinary customer never looks at that. Waterman is the name that sells the pen.

XQ24. But you cannot name a single person—A. (interrupting) There are too many people going through my hands in a day to recollect any particular party.

XQ25. And how many pens during the last six years have you ever repaired, bearing the name of A. A. Waterman & Com-

pany? A. Well, I do not take A. A. Waterman pens for repairs. I refuse them.

XQ26. How many pens have ever been presented to you during that period to be repaired? A. Well, I can't tell you exactly how many pens were offered for repair, but I would say I suppose in a year we would have anywhere from fifteen to twenty-five, at least.

XQ27. In the year? A. In the year.

XQ28. How many L. E. Waterman pens during that time were presented to you for repairs? A. I could not tell you, because they are coming in continually all day long, sometimes to be filled and cleaned, and washed out and fixed up. It only takes 1400
five minutes to do the job. We have a boy doing nothing else.

XQ29. Hundreds in a week? A. No, not hundreds.

XQ30. A hundred in a week? A. No.

XQ31. How many? A. I would say on an average to be filled and cleaned we would clean from five to ten every day right in our place, without sending them to the factory.

XQ32. And how many to be repaired? A. Well, I should say about ten a week.

Examination taken and reduced to writing on this sixteenth day of March, nineteen hundred and eleven, the signature of the said witness being waived by agreement of counsel for both parties. 1401

Mr. Watson: Counsel for plaintiff states on the record that he has concluded the examination of witnesses under the commission issued to Edmund Desaulniers, notary public, and counsel for plaintiff also states on the record, for notice to defendant's counsel, who is now present, that the testimony under the commission issued to the Honorable J. H. Denton, at Toronto, will be gone on with on Saturday morning, the eighteenth instant, at 9:30 o'clock, at his chambers in the City Hall, Toronto, Canada.

EDMUND DESAULNIERS.
Commissioner.

UNITED STATES CIRCUIT COURT,

DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY, Plaintiff, against MODERN PEN COMPANY, Defendant.	In Equity.

1403 Testimony taken under the Commission issued to The Honorable J. H. Denton by the United States Circuit Court for the Southern District of New York, United States of America, dated Tenth day of March, 1911, pursuant to an order of the United States Circuit Court entered and filed on Third day of March, 1911, said Commission being annexed to these depositions pursuant to such order. Said testimony was taken in the City Hall, City of Toronto, Province of Ontario, Canada, beginning March 18th, 1911, at 9:30 o'clock in the forenoon pursuant to due notice to opposing counsel.

Appearances:

Samuel S. Watson, Esq., for the Plaintiff.

1404 Alexander S. Bacon, Esq., for the Defendant.

A. G. Newall, of Thomas Bengough & Co., sworn in as stenographer.

NORMAN A. SINCLAIR, who resides in Toronto, Canada, and whose occupation is Stationer, age 21 years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed and examined on the part of the plaintiff doth depose and say as follows:

Q1. Please state your name, place of residence and occupation? A. Norman A. Sinclair, wholesale stationer, Toronto, Canada.

Q2. With what concern are you connected? A. Warwick ros. & Rutter, Limited.

Q3. Where is their place of business? A. 401 King Street, 'est, Toronto.

Q4. And how long have you been connected with that con- ern? A. Twenty years.

Q5. Is it a Corporation or a partnership? A. Corporation.

Q6. Who are the Officers of that Company? A. George R. Varwick is President and C. F. Rutter, Vice-President, and harles E. Warwick, Secretary-Treasurer.

Q7. And what are your duties in this business? A. I am the anager of the Stationery Department.

1406

Q8. And as manager you have general management of the hole business? A. The Stationery Department.

Q9. Of the whole Stationery Department? A. Yes, sir.

Q10. Does that include the buying and selling of the merchan- ise handled in that department? A. Yes.

Q11. And how long has that been your duties? A. Approxi- nately ten years.

Q12. And in that department you handle and sell fountain ens? A. Yes, sir.

Q13. Do you handle and sell fountain pens which are marked . A. Waterman & Co., New York? A. I do not know that hey are marked A. A. Waterman & Co., New York; they are narked A. A. Waterman & Co.

1407

Q14. How long has your concern been handling fountain ens? A. Approximately 40 years, 30 years.

Q15. Ever since you have been connected with the business? . Before that.

Q16. And during that time what kind of fountain pens have ou handled? A. All kinds; I can hardly tell you—we have so nany kinds.

Q17. What kind of fountain pens do you handle and sell ow? A. Numerous kinds.

Q18. Will you enumerate some? A. Mostly our own im- printed lines.

1408 *Norman A. Sinclair*

Q19. And what are the imprints on those lines? A. "Perfect" is one name; "Vice Regal"—"Vice Roy," I mean; "University" and "Imperial" in two or three styles, and those made by the A. A. Waterman & Company.

Q20. And how are those pens marked or stamped which you sell which you get from A. A. Waterman & Company? A. Marked with their imprint and some patent number underneath the name.

Q21. They bear the name of A. A. Waterman & Company? A. Yes.

Q22. And how long have you handled those pens? A. I think it is about three or four years.

1409

Q23. Do you have the charge of the buying and selling of fountain pens as well as other stationery goods in your department? A. Yes, sir.

Q24. And where did you buy these pens which are marked and stamped A. A. Waterman & Company? A. From A. A. Waterman & Company or Modern Pen Company, under the two names.

Q25. Where is their place of business? A. I think it is 22 Thames Street, New York, if I am not mistaken.

Q26. Have you been dealing extensively in these pens that you got from A. A. Waterman & Co., New York? A. Oh, we have sold quite a few.

Q27. Do you advertise quite extensively? A. Not much; some; Oh, well, fairly good amount.

1410

Q28. You represent yourself as the Canadian Agents of A. A. Waterman & Co.? A. No, I do not think we do, we are agents for the "Lincoln" pen.

Q29. You have never represented yourself to the trade in any way as being agents of the A. A. Waterman & Co., New York? A. No.

Q30. You are prepared to say that you have not put out any advertisements or any advertising matter that shows that you hold yourself out as the agents of the A. A. Waterman & Co., New York? A. No.

Mr. Bacon: I object to the evidence as immaterial, irrelevant and incompetent.

Q31. You sell these goods which you get from A. A. Waterman & Co., as Waterman Pens, Waterman Fountain Pens? A. We have been selling them as "Lincoln" fountain pens.

Q32. Never sold them as Waterman pens? A. No.

Q33. Never supplied them on orders which called for Waterman pens? A. Well, I could not—to the best of my knowledge I could not—I don't know that we have or we have not. You know how this is. A traveller orders a Waterman pen—they abbreviate everything that they order in our business; the articles are so numerous they abbreviate everything, every article. If 1412
they call for Waterman pens at all they would not put A. A. on the order; generally they would put "Wat" perhaps "Lin" for Lincoln; that is generally the way; the salesmen put down "Wat" or "Lin;" of course I do not see all the orders; they are sold as Lincoln fountain pens.

Q34. Not sold as Waterman pens? A. Not sold as Waterman pens.

Q35. Not advertised as Waterman pens? A. No, sir; recently, I might say, that we have left off the stamp or "Lincoln" name on the barrel, and I think on the box; that is the last six or eight months.

Q36. What do they stamp them now? A. A. A. Waterman & Company, New York. When I made the contract—when I 1413
started taking up the line, I think it was the "Lincoln" fountain pen made by A. A. Waterman & Company, New York, and consequently our case and everything is labelled "Lincoln Fountain Pen;" at least, sold them under that name, although the stamp "Lincoln" is left off the barrel.

Q37. You have never billed them out of your establishment as Waterman pens? A. I could not say; the girls make a direct copy of what the salesman puts down in his order sheet. If he abbreviates the proposition, and puts "Wat" pens, they will put "Wat" pens; they put whatever the traveller puts down.

Q38. You say you never sold these as Waterman pens? A. We never instructed the salesmen or sold them ourselves as Waterman's pens.

Q39. You don't do that because you considered that that name belongs to the L. E. Waterman Company?

Mr. Bacon: I object as immaterial, irrelevant and incompetent what he considered.

Q40. Is it not a fact that Waterman's Ideal Fountain Pens have been known and called for in the trade as Waterman's pens for twenty years? A. I do not know.

1415 Q41. Never heard? A. I have heard of the Ideal pen.

Q42. Have you not heard them called Waterman's pens, Waterman's fountain pens? A. These we do sell are called Waterman's fountain pens.

Q43. You sell Waterman's Ideal Fountain Pens? A. No. We do not sell Waterman's Ideal Fountain Pens.

Q44. You do not handle them? A. No.

Q45. You never knew them in the trade? A. I think we sold them some ten years ago, had one case in for a time; I have forgotten, but I think we did.

Q46. You never advertise these pens you got from A. A. Waterman & Company as Waterman's pens? A. No, sir.

Q47. And you never billed them out as Waterman pens? A. I don't think so, as far as I can remember.

1416 Q48. You never billed them out in answer to an order for Waterman pens as Waterman pens—never supplied them as Waterman pens? A. No, no; if they send in an order to us, one of our customers that we had supplied these pens before to, they would send in an order for one of those pens, call it Waterman pen; we would naturally sell them the pen if we had sold them goods before.

Q49. I show you copy of the "Bookseller & Stationer" for October, 1910, and published in Toronto, Canada, an advertisement which appears on the inside of the front cover, and ask you if that advertisement was inserted by Warwick Bros. & Rutter, Limited, with which you are connected? A. Yes, sir.

Mr. Watson: The advertisement identified by the witness is offered in evidence and marked Plaintiff's Exhibit No. 23.

Mr. Bacon: Objected to as immaterial, irrelevant, incompetent and in no way connected with the defendant; no connection between the defendant and this firm.

Q50. Will you please look at the advertisement which I have just shown you, Plaintiff's Exhibit No. 23, and over the name of the concern Warwick Bros. & Rutter, Limited, appear the words "Canadian Agents." What do you understand that means? A. It means this, "Waterman's Lincoln" (witness points to top of page of Plaintiff's Exhibit number 23). 1418

Mr. Watson: It is stipulated that the advertisement appearing on the inside cover of the magazine identified by Mr. Sinclair may be used without the rest of the contents or advertisements of the magazines.

Q50½. I show you cover of "Bookseller & Stationer" for October, 1909, and the advertisement appearing on the inside cover of that magazine, and ask you if that advertisement was also inserted by Warwick Bros. & Rutter? A. Yes, sir.

Mr. Watson: The advertisement identified by the witness is offered in evidence and the same is marked Plaintiff's Exhibit number 24; it is stipulated in this case, as in the other, that the advertisement appearing on the 1419
inside cover of the magazine identified by Mr. Sinclair may be used without the rest of the contents or advertisements of the magazine.

Mr. Bacon: Make that stipulation cover all of those magazines.

Mr. Watson: It is stipulated that the inside cover of both of the magazines, Plaintiff's Exhibits numbers 23 and 24 may be used only and the balance of the magazine omitted from the record.

1420 *Norman A. Sinclair*

CROSS-EXAMINATION by Mr. Bacon:

XQ51. Mr. Sinclair, do Warwick Bros. & Rutter, Limited, do more than buy these pens of A. A. Waterman & Company or the Modern Pen Company and sell them again? Are they agents in any other sense than they buy and sell? A. No.

XQ52. Does the Modern Pen Company or A. A. Waterman & Company have anything to do with these advertisements offered in evidence? A. No, sir.

XQ53. Did they know anything about them? A. No.

XQ54. Did they pay for them wholly or in part? A. No,
1421 sir.

XQ55. As far as you know they have never seen them to this day? A. No, sir.

XQ56. When you sell an A. A. Waterman pen do you sell them as A. A. Waterman & Company's pens or merely as Waterman pens? A. Sell them for A. A. Waterman & Company's pens; the advertisements show that.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ57. When you take these orders or salesmen take these orders for the pens, do not you send those orders to the A. A. Waterman & Company to have them filled and shipped direct to
1422 the customers? A. No, sir.

RDQ58. Do not you ever do that? A. No, sir.

RDQ59. They do not know who you sell the goods to at all? A. No, sir.

RDQ60. And these pens are all in little boxes? A. Yes, sir.

RDQ61. They are supplied by A. A. Waterman & Company, New York? A. Yes, sir.

RDQ62. And have their name "A. A. Waterman & Company, New York"? A. Yes, on the box.

RDQ63. And have your name on it? A. No, sir.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ64. In any instance have you ever bought goods from A. A. Waterman & Company or Modern Pen Company that your name has been placed on the goods or on the box? A. I think not.

RXQ65. In other words, you buy from them just as anybody else buys from them? A. Yes.

RXQ66. And you are not agents in any sense whatever except that you purchase from them? A. Well, excepting that we have an arrangement they would not sell the "Lincoln" Fountain Pen to anybody else in Canada, fountain pen stamped "Lincoln," that 1424
is all.

RXQ67. And in your instructions to agents, you instruct them to sell these as "Lincoln" pens or A. A. Waterman & Company? A. A. A. Waterman & Company's pens.

RXQ68. That is your invariable instruction? A. Yes.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ69. You do have some agreement or special arrangement with A. A. Waterman & Company for the sale of these goods? A. Well, the "Lincoln" fountain pen, they are not allowed to sell to anyone else. I have not the details; at the time of the contract which I made some three or four years ago, they were not to sell the Lincoln fountain pen or fountain pen stamped "Lin- 1425
coln" to anyone except ourselves other than in Toronto, Montreal and Quebec City, I think it was; it was an imprinted pen, the "Lincoln," they were not to sell those; they could sell those in those three cities; I don't know that I would have it in writing; the thing has passed into history; I think now "Lincoln" is left off them.

RDQ70. Was that agreement in writing? A. I think it was in writing; I think the man from the Modern Pen Company may have wrote a letter to that effect.

RDQ71. Will you produce that letter? A. If I can find it I will. May I just send you the letter if I can find it; I don't

know that I have it; it is three years ago now, and it was a matter of no moment to us.

Mr. Watson: If you send it down and Colonel Bacon accepts it, I will.

Mr. Bacon: Yes, I will.

WALTER WOODS, who resides in Hamilton, Canada, and whose occupation is merchant, aged 21 years and upwards, being duly and publicly sworn pursuant to the direction annexed
1427 hereto and examined on the part of the plaintiff doth depose and say as follows:

Q1. Please state your name in full, and your place of residence and your occupation? A. Walter Woods, Wholesale Merchant, Hamilton, Province of Ontario, Canada.

Q2. And where is your place of business in Hamilton? A. McNabb Street, Hamilton.

Q3. And what line of business are you in? A. Wholesale wooden-ware and general sundries.

Q4. In connection with this business, have you ever had occasion to handle and sell fountain pens? A. We have.

Q5. I show you a letter and ask if that emanated from your house, addressed to L. E. Waterman & Company, Montreal?
1428 A. Yes, this is from our house.

Mr. Watson: Letter, dated October 11th, 1910, identified by the witness, is offered in evidence, and marked Plaintiff's Exhibit No. 25.

Mr. Bacon: Objected as immaterial, irrelevant, incompetent and in no way connected with the defendant.

Q6. I show you another letter, which is dated October 19th, 1910, addressed to L. E. Waterman & Company, Montreal, and ask if that came from your house? A. Yes.

1429

Mr. Watson: The letter identified by the witness is offered in evidence and marked Plaintiff's Exhibit Number 26.

Mr. Bacon: The same objection.

Q7. From whom did you secure the fountain pens which you were seeking at that time? A. Brown Bros., Toronto.

Q8. What did you order for them? A. Waterman fountain pens.

Q9. How many? A. One dozen, I think.

Q10. And did you receive from them an invoice of those goods? A. Yes, sir.

Q11. Have you got that invoice? A. Yes, sir. 1430

Q12. Will you please produce it? A. Here it is, dated October 25th, 1910.

Q13. Annexed to this invoice I note carbon copy of letter? A. That is carbon copy of order; that is just the order as sent in which was attached to the invoice.

Mr. Watson: The letter dated October 19th, 1910, from Walter Woods & Company, to Messrs. Brown Brothers, Toronto, and the invoice produced by the witness are offered in evidence and the same marked Plaintiff's Exhibit 27.

Mr. Bacon: Objected to as immaterial, irrelevant, incompetent and no connection shown between Brown Bros. and the defendant. 1431

Q14. Do you know what kind of pens were shipped on account of that order, bill? A. Nothing any further than the invoice.

CROSS-EXAMINATION by Mr. Bacon:

XQ15. Do you know whether they were made by L. E. Waterman or A. A. Waterman? A. I do not know anything about it.

1432 *Walter Woods*

RE-DIRECT EXAMINATION by Mr. Watson

RDQ16. When you ordered Waterman pens whose manufacture of pens did you expect to get?

Mr. Bacon: Objected to as immaterial, irrelevant and incompetent.

A. I only knew one; I didn't know that there was a second make at all.

RDQ17. Whose was that? A. Just the Waterman pen; the order came to me in the regular course of business and I ordered it in the regular way.

1433

RDQ18. Did that mean Waterman Ideal Fountain Pens? A. No, I did not know anything about "Ideal" because I did not order "Ideal," I only knew one Waterman pen, and I ordered.

RDQ19. From the L. E. Waterman—the same as your letter is addressed? A. Just the same.

RDQ20. That is the only concern you knew of that made Waterman pens? A. That is the only one I knew of.

Mr. Bacon:

RDQ21. And you do not know what pens you got? A. No, because they were sent direct to my customer.

1434

Plaintiff's Exhibit 25. 1435

(Letter head of Walter Woods & Co.)

Hamilton, Ont., October 11th, 1910.

Messrs. L. E. Waterman Co.,
136 St. James St.,
Montreal, Que.

Gentlemen:

One or two of our men are asking for fountain pens and one has sold 12 assorted (Medium and Fine points) Blk. mottled and chased at $2.50, the regular discount to retail trade to come off this and we presume we can get a profit. 1436

If you have such a pen, please mail for our account to W. H. Taylor, Cochrane, Ont., and send us particulars of prices of such lines as we can sell to the country trade and perhaps to the city trade.

Thanking you in advance for early attention, we are

Yours truly,

WALTER WOODS & CO.

Plaintiff's Exhibit 26.

(Letter head of Walter Woods & Co.) 1437

Hamilton, Ont., Oct. 19th, 1910.

Messrs. L. E. Waterman & Co.,
Montreal, Que.

Gentlemen:

Responding to yours of October 18th, please note that we have procured and sent forward Waterman Pens to fill our order.

Yours truly,

WALTER WOODS & CO.

1438 **Plaintiff's Exhibit 27.**

Oct. 19, 1910.

Messrs. Brown Bros.,
Stationers, etc.,
Toronto, Ont.

Gentlemen:

Please send, cheapest way, for our account, to W. H. Taylor, Cochrane, twelve (12) Waterman Fountain Pens bbls Mottled and Chased, Medium and Fine Points at $2.50 each discount to us 30% as quoted and oblige,

Yours truly,

1439 WALTER WOODS & CO.

Toronto, Oct. 25, 1910.

Messrs. Walter Woods & Co.,
Hamilton, Ont.

To The Brown Brothers, Limited,

Stationers, Paper Dealers, Bookbinders,
Manufacturers of Account Books, Leather Goods, etc.

12 Waterman Pens	32	2.50	30.00
1440		30%	9.00
			21.00
		Charges	.15
			$21.15

Express Prepaid
To
W. H. Taylor, Cochrane
63
O. K. 2052
(Stamped) Walter Woods & Co.
Received Oct. 27/10/
Invoice No. 7600
Hamilton, Ont.

CHARLES E. WARWICK, who resides in Toronto, Canada, and whose occupation is a merchant, aged 21 years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, doth depose and say as follows:

Q1. Please state your name, address and occupation? A. Charles E. Warwick, Treasurer and Secretary, Warwick Brothers & Rutter, Limited, Toronto, Canada. House address 407 Markham Street, Toronto.

Q2. What are your duties in connection with Warwick Bros. & Rutter? A. Secretary and Treasurer.

Q3. Do you have anything to do with the buying and selling of the merchandise? A. I have a little to do with the selling, 1442
nothing to do with the buying.

Q4. Have you at any time made any arrangements for the purchase of fountain pens? A. No, sir.

Q5. Have you ever anything to do with the advertisements? A. No, sir.

Q6. Did you ever see any of these advertisements? A. Yes, sir, I have seen them.

Q7. These same advertisements, Plaintiff's Exhibits 23 and 24, which I show you, appeared in several copies of this "Bookseller & Stationer" did not it? A. I believe it did, yes.

Q8. And your concern holds itself out, represents itself as the agents of A. A. Waterman & Company, New York? A. Yes, sir. 1443

Q9. And you have been doing that to the trade for some time? A. Quite a little while, yes.

Q10. About 3 years? Two or three years? A. I don't know; I would presume about that time.

Q11. And you had some arrangement with them to sell certain of their goods exclusively in Canada? They could not sell them to anybody else?

Mr. Bacon: Objected to as leading.

A. Yes, sir.

1444 *Charles E. Warwick*

Q12. You are here under subpoena, are you not? A. Yes, sir.

Q13. And you never had any talk with me or anybody representing the L. E. Waterman Company regarding this testimony? A. No, sir.

Q14. And you are not very particularly anxious to aid the L. E. Waterman Company in this controversy? A. Not to aid them; the A. A. Waterman & Company are the people that we represent.

Q15. And you sell these goods that you get from the A. A. Waterman & Company as Waterman Pens? A. We sell them as Lincoln pens.

1445

Q16. Do not you sell them as Waterman's pens? A. Well, A. A. Waterman & Company's "Lincoln" pen.

Q17. In this advertisement, in big letters, it appears "Waterman's Lincoln;" there is no "A. A."?

Mr. Bacon: Objected to as the advertisement speaks for itself, and shows it does have in big letters "A. A. Waterman & Company."

Mr. Watson: Counsel objects to interruption of defendant's counsel as evidently intended to prompt the witness.

Witness: A. A. Waterman is on each box.

Q18. I call your attention to the second line of this advertisement, Plaintiff's Exhibit Number 23, where appears the words "Waterman's Lincoln;" there is no "A. A." in connection with that, is there? A. Not in that; there is on the line below.

1446

Q19. Your salesmen go around to the trade under your instructions and pretty well cover Canada, do not they? A. Yes, from Halifax to Vancouver.

Q20. And your instructions to them is to sell these goods?

Mr. Bacon: I object.

Q21. Your instructions to them is to sell these goods as Waterman pens?

Mr. Bacon: Objected to as leading and wholly improper on direct-examination.

Witness: We sell them as A. A. Waterman pens.

Q22. And you do sell them right along as Waterman pens? A. Waterman's "Lincoln" pen.

Q23. And you make quite a point among the trade that you are the agents of A. A. Waterman & Company, New York, do not you? A. Oh, not particularly.

CROSS-EXAMINATION by Mr. Bacon:

XQ24. You do not have anything to do personally with instructions to agents, do you? A. No, sir. 1448

XQ25. Do not have anything to do personally with the selling of fountain pens? A. No, sir.

XQ26. Do not know anything about it personally—absolutely out of your department? A. Yes.

XQ27. Have anything to do with any advertisements? A. No, none whatever.

XQ28. Have you ever had any communication verbal or written personally with any member of the firm of A. A. Waterman & Company or anybody in connection with The Modern Pen Company?

Mr. Watson: Objected to as immaterial.

1449

Witness: None whatever.

XQ29. Do you know what business relations exist between your company and the Modern Pen Company or A. A. Waterman & Company? A. Not particularly.

XQ30. Do you know of any relations except that you buy pens from them and afterwards sell them to who ever you please? A. That is all.

XQ31. That is the only sense in which you are agents? A. Yes.

XQ32. And is that the only sense in which you represent yourself to be the agent? A. Yes.

1450 *Charles E. Warwick*

XQ33. That you sell the pens manufactured by them? A. That is all.

XQ34. As far as you know, the defendant had nothing to do with these advertisements and never knew anything about them? A. No.

XQ35. Never paid for them? A. No.

XQ36. As far as you know, all your salesmen both at home and on the road, are instructed at all times to sell these pens as A. A. Waterman's pens? Are they not? A. A. A. Waterman's "Lincoln" pens.

XQ37. A. A. Waterman's "Lincoln" pens at all times? A. Yes.

1451

XQ38. Those are the instructions given to your representatives? A. Yes.

XQ39. That they are to be very careful and use the words "A. A. Waterman" in connection with those pens? A. "Lincoln" Fountain Pens.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ40. Why do you find it necessary to instruct these men so particularly to use the name "A. A. Waterman"? A. Why?

RDQ41. Yes? A. We do not find it necessary; we sell them as "Lincoln" fountain pens; in fact, they are sold as "Lincoln" fountain pens in a great many cases.

1452

RDQ42. You just stated that you particularly instructed your salesmen to call them A. A. Waterman; why do you find it necessary to ask them to use A. A. Waterman? A. I have no reason why they should use the words "A. A. Waterman."

RDQ43. Or why they should use "A. A." at all? A. No.

RDQ44. You call them in this advertisement "Waterman's Lincoln," do you not? A. Yes.

RDQ45. And you sell them largely under that name, do not you? A. "Waterman's Lincoln Fountain Pen."

RDQ46. And you have not been particularly careful to use the initials, "A. A." have you? You just called them "Water-

POOR COPY

man's Lincoln," did not you? A. We have used the initials "A. A."

RDQ47. Why do you find it necessary to use the initials "A. A."? A. Well, that is the name of the pen.

RDQ48. Are you familiar with the Waterman's Ideal fountain pen? A. Not particularly.

RDQ49. Ever hear of it? A. I have heard of it.

RDQ50. Ever handle it; ever sell it? A. Not of late years; I handled it about 15 or 20 years ago.

By Mr. Bacon:

RDQ51. The purchase or sale of fountain pens does not come under your personal observation at all? A. No. 1454

RDQ52. And you do not know anything about the quarrel between the plaintiff and the defendant? A. Not anything at all.

WILLIAM J. C. WILSON, who resides in Toronto, Canada, merchant, aged twenty-one years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

Q1. Please state your name, place of residence and occupation? A. William J. C. Wilson, 72 King Street West, Toronto, Canada, Wilson Stationery & Printing Company. 1455

Q2. And how long have you been in the stationery business? A. About 22 years, in Toronto, Canada.

Q3. During what time have you been handling and selling fountain pens? A. About fifteen years.

Q4. And during this period have you been familiar generally with the fountain pens on the market as a merchant usually is? A. Yes.

Q5. And during this period what makes of fountain pens have you handled and sold? A. We have only handled Waterman's "Ideal" fountain pen.

1456 *William J. C. Wilson*

Q6. When your customers come into your store enquiring for Waterman's Ideal fountain pens, what do they call for? A. They generally ask for a Waterman fountain pen.

Q7. And how long has that been a fact? A. Since ever we started to handle those pens, 15 years ago.

Q8. Do you know whether that is the common name among the trade and public for Waterman's Ideal Fountain pens? A. Yes.

Q9. And has that been so ever since you have been familiar with these goods? A. Yes, sir.

Q10. Can you state whether or not it is a fact that this name
1457 now is better known than ever? A. Yes, sir.

Q11. As far as the matter has come to your personal knowledge, has Waterman's Ideal Fountain Pens proved satisfactory to your customers?

Mr. Bacon: Objected to as immaterial, incompetent, from this witness.

Q12. As far as the matter has come to your personal knowledge, has Waterman's Ideal Fountain Pens proved satisfactory to your customers? A. Yes.

Q13. What is the reputation among the trade of Waterman's Ideal Fountain Pens? A. As far as I know, there are no complaints about them; they are very satisfactory.

1458 *CROSS-EXAMINATION by Mr. Bacon:*

XQ14. You deal in the Ideal pen exclusively? A. Yes, sir.

XQ15. Never dealt in anything else? A. Nothing else.

XQ16. You have never handled the A. A. Waterman & Company's pens? A. No, sir.

XQ17. Do not you know that if any man owns an A. A. Waterman pen, he is apt to call it a Waterman pen as anything else? A. Yes.

By Mr. Watson:

XQ18. Why does he call it a Waterman pen? A. Because a Waterman pen seems to be the only known pen over here.

XQ19. And when he has an A. A. Waterman pen, and he calls it a Waterman pen, is it because he thinks he has an Ideal Waterman's fountain pen? A. Yes, sir.

By Mr. Bacon:

XQ20. How do you know that any man who has an A. A. Waterman & Co's pen generally thinks that he owns an Ideal? A. Because we have found that quite a common occurrence, people coming in with their pens—we had a case two weeks ago, a gentleman coming to the store with an A. A. Waterman pen and asking my clerk to change the point; we told him that was an A. A. Waterman pen, that the L. E. Waterman point would not fit this, and he said, "I understood it was a Waterman Ideal fountain pen I had," and he said he never knew of any other pen on the market; this occurs about every other month. 1460

XQ21. And there are a good many people who have Ideal pens that perhaps think they have the A. A. Waterman pen? A. I never came across any case of that.

HUBERT H. BROWN, who resides in Toronto, Canada, and whose occupation is Shipping Clerk, aged 21 years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed and examined on the part of the plaintiff, doth depose and says as follows: 1461

Q1. Please state your name and place of residence and occupation? A. Hubert H. Brown, Toronto, Canada, Shipping Clerk.

Q2. With whom are you connected? A. Brown Bros, Limited.

Q3. And where is their place of business? A. 51 Wellington Street West, Toronto, Canada.

Q4. And what is their line of business? A. Stationery, paper.

Q5. Do they handle and sell fountain pens? A. Yes.

Q6. How long have you been connected with this concern? A. About twenty years.

1462 *Hubert H. Brown*

Q7. And how long have you been shipping clerk? A. About fifteen years I guess, twelve to fifteen.

Q8. Do the orders, goods that are shipped by Brown Bros. all come under your department and under your supervision? A. They do.

Q9. I show you the Plaintiff's Exhibit "27" and ask you if you had charge of the shipment of these goods? A. Yes, I did.

Q10. And what did you ship?

Mr. Bacon: Objected to as immaterial, irrelevant and incompetent.

1463

Q11. And what did you ship? A. The Waterman pen referred to there; you are wanting to know what Waterman pen we shipped, I presume?

Q12. Yes? A. It was A. A. Waterman pen.

Q13. And you shipped it in response to that order, did not you—order attached to Plaintiff's Exhibit 27? A. Yes, sir, we did.

Q14. And you shipped the A. A. Waterman & Co's pens in response to that order? A. Yes, we shipped the pens we carry.

Q15. You do not carry Waterman's Ideal Fountain pen? A. No.

Q16. And you did ship in answer to that order pens marked A. A. Waterman & Co.? A. Yes.

1464

Q17. Where did you get those pens from? A. I don't know.

Q18. Those pens are marked A. A. Waterman & Co., New York? A. I would not be sure of that.

Q19. You got them from New York? A. I could not tell you where we got them from.

CROSS-EXAMINATION by Mr. Bacon:

XQ20. Do Brown Bros., Limited, have any business relations with The Modern Pen Company or A. A. Waterman & Co. as far as you know? A. All I know about it is I see the lists of the pens which we sell are imprinted The Modern Pen Company.

XQ21. You do not know whether they buy them from The Modern Pen Company or Warwick Bros. & Rutter, Limited? A. No, sir, I do not know where they buy them; I have nothing to do with that part.

XQ22. Were these marked "Lincoln" these pens? A. Well, as a matter of fact I did not examine them; I did not examine the pens; as a matter of fact what I did was simply to check them over by the box, the label; I did not see the pens themselves, of course, you understand.

XQ23. Is this bill, Plaintiff's Exhibit "27," made out in your handwriting? A. No, sir; it is not mine.

XQ24. How do you know that it was A. A. Waterman pens 1466
that were sent out under the order? A. Well, the boxes in which they are packed are imprinted with A. A. Waterman.

XQ25. Do you remember this specific order at all? A. Oh, I remember that order, yes.

XQ26. This small order to Walter Woods & Company, of Hamilton, Ontario? A. Yes, I remember the occasion of it going.

XQ27. And do you remember personally having examined these packages to see that they were A. A. Waterman & Co.'s pen? A. Yes, that is my duty to check them according to the order.

XQ28. But this does not indicate what kind of pens went? A. No; we charge them out of course the way they are ordered; that is our rule, you know. If a man orders Waterman pens 1467
we bill them Waterman pens.

XQ29. And if A. A. Waterman pens you bill them as A. A. Waterman pens? A. Yes, that is our rule, unless there is some special reason for not doing so, substitution made or something like that; we would call them different.

XQ30. This order accompanies your bill and you make the bill conform in its phraseology to the order? A. That is the rule, yes, sir. I can give you an instance. A man would order these brush erasures, erasures with brush attached to them—one man might call them brush erasures and we would bill them that, and another man would call them Erasure 1087 and we would

1468 *Hubert H. Brown*

bill them that and a man looking for his order would identify them by his own description.

XQ31. Have you handled L. E. Waterman's pen at all? A. Never seen them in the store.

XQ32. Or the Ideal Waterman pen? A. The Ideal I have not seen.

XQ33. Do you retail at all? A. We retail; yes, sir.

XQ34. And the A. A. Waterman pens have always been satisfactory so far as you know? A. Yes, sir.

XQ35. And you never heard of an Ideal pen? A. Oh, yes, I have heard of them but I never seen them in the store.

1469 XQ36. Did you send these to Walter Woods & Company or direct to their customer? A. Direct to their customer.

XQ37. Where is that indicated here? A. Usually at the bottom of the invoice.

XQ38. Sent to W. H. Taylor, Cochrane? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ39. You are here under subpoena? A. The order of the Judge.

RDQ40. And you had no conversations with me regarding this matter prior to your examination here? A. No.

RDQ41. Never seen me before? A. No, sir.

RDQ42. Have you talked with anybody connected with the
1470 L. E. Waterman Company in regard to your testimony today? A. No, sir.

RDQ43. You are here as a hostile witness? A. Yes, sir.

RDQ44. Your interests are entirely with A. A. Waterman & Co. in this matter? A. We are not with A. A. Waterman at all; my interests is with Brown Bros. just now.

RDQ45. And Brown Bros. sell A. A. Waterman & Co.'s pens? A. I believe so.

RDQ46. And they do not sell Waterman's Ideal Fountain pens made by L. E. Waterman Company? A. Not at all.

By Mr. Bacon:

RDQ47. Have you ever talked with anybody from the Modern Pen Company or A. A. Waterman & Co? A. No, sir.

RDQ48. Never seen me before? A. No, sir.

RDQ49. You are not hostile to the L. E. Waterman Company? A. No, sir; I am not.

RDQ50. Why did you say you were? A. Hostile to them?

RDQ51. Yes. A. I don't think I said that.

RDQ52. Why they made you say that? A. Did they?

RDQ52½. Yes. A. I did not—I was not aware of it.

By Mr. Watson: 1472

RDQ53. You have no interest in aiding the L. E. Waterman Company in this controversy? A. No, sir; I have not.

RDQ54. And you did not come here voluntarily to give your testimony? A. No, sir; I was ordered by the Court.

By Mr. Bacon:

RDQ55. You have no interest in A. A. Waterman & Co.? A. No, sir; I have no interest in A. A. Waterman & Co.

RDQ56. You do not know that your people buy from them at all? A. From the A. A. Waterman Company?

RDQ57. Yes. A. I do not know where they buy; it is not my business.

1473

OLIVER B. STAUNTON, who resides in Toronto, Canada, occupation is a merchant, aged 21 years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed and examined on the part of the plaintiff, doth depose and say as follows:

Q1. Please state your name, place of residence and your occupation? A. Oliver Butler Staunton, 13 Simpson Avenue, Toronto, Canada; stationer.

1474 *Oliver B. Staunton*

Q2. Where is your place of business? A. 50 Yonge Street, Toronto, Canada.

Q3. How long have you been in the stationery business in Toronto? A. Since December, 1889.

Q4. During this period what part of it have you handled and sold fountain pens? A. Oh, I suppose we bought some fountain pens within six or eight months after being in business.

Q5. You handled and sold them ever since that time? A. Yes, sir.

Q6. For the last twenty years you have handled and sold fountain pens? A. Quite that.

1475 Q7. During that time have you been generally familiar as a merchant with the fountain pens on the market? A. With many of them.

Q8. During this period what makes of fountain pens have you handled and sold? A. The first we had I think it was Moore's Non-leakable; as a matter of fact, we only handled the odd makes, as we called them, for a few months, perhaps a year, and then a representative of the Waterman Company, Waterman Ideal Company, called on us and we laid in a stock of his pens. We got rid of all the other makes that we had and we have practically sold only the Waterman pen since then; I mean Waterman's Ideal pen—I call it the Waterman pen, leave off the "Ideal."

1476 Q9. At the present time you sell Waterman's Ideal fountain pen? A. I do.

Q10. And by what name do your customers generally ask for Waterman's Ideal fountain pen? A. They usually ask for a Waterman pen or simply, "Give me a Waterman."

Q11. And how long has that been the situation? A. Well, as the public have grown familiar with seeing the advertisements, I suppose, of the L. E. Waterman Company. It seems to me it is growing continually; at first, 20 years ago or 15 or 18 years ago, I do not think the Waterman pen was as well known; it could not be as the advertising money was not spent, and in those days I do not remember how it was asked for, but latterly the pen is often, very often, asked for simply as a Waterman pen; occasionaly some one says, "Ideal."

Q12. Has it ever come to your knowledge or brought to your personal attention in any way that a customer or person asking for a Waterman pen expected to get an A. A. Waterman & Co. pen? A. I have no recollection of such a case.

Q13. Have you found that as far as the matter has come to your knowledge that Waterman's Ideal Fountain pen has proved satisfactory to your customers? A. It has proved satisfactory with the minimum of exceptions in an article that we handle as many of.

Q14. You sell a great many pens? A. I think the books of the Company would show that we handle quite a number; I think one year we were told that we had sold the largest number of any dealer in Canada; I think that is correct. 1478

CROSS-EXAMINATION by Mr. Bacon:

XQ15. When did you first see Mr. Watson? A. It would be two weeks ago, three weeks ago; I should think about three weeks ago.

XQ16. He called on you here in Toronto? A. Yes, at my office.

XQ17. Told you what testimony he wanted? A. I don't know as I could put it that way; he stated in outline his business here and asked me a few questions, some of which he has asked now and which I gave the same answers to.

XQ18. He told you that he wanted to prove that people called for the Waterman pen? A. I would not like to use the word "prove" but I suppose that his object was to do so or he would not have called at my office. 1479

XQ19. And you saw him yesterday? A. Yes, sir.

XQ20. And you went over the thing with him yesterday? A. I would not say go over the ground; he asked me a few questions and I stated some of the answers I have given now because it is all a matter of truth.

XQ21. And he asked them as leading questions and he said, these things are so, are they not? A. I do not think he put it quite that way. The answers which I give are simply facts

which when your question was asked I would answer in the same way.

XQ22. How long have you sold L. E. Waterman pens exclusively? A. We sold them exclusively with perhaps an occasional pen that we might procure, like a Wirt pen—if you call that exclusively—we have sent out and got a Wirt pen; we have sent to New York and got a Sandford & Bennett pen—but you might say we have sold the Waterman pen exclusively for 18 years; we have got a couple or three dozen Swan pens on our desk because we do an English trade with some English tourists and they occasionally come in and ask for one, but in
1481 my recollection I have sold two Swan pens because two people have come in and asked for Swan pens.

XQ23. But for 18 years you have sold substantially no pen except the L. E. Waterman? A. Put it that way, yes.

XQ24. Never sold A. A. Waterman pens? A. Not to my knowledge; I do not recollect a single sale.

XQ25. Never dealt in them at all? A. Yes, we have dealt in them by taking them in exchange; sent one to Montreal I believe last week.

XQ26. You deal direct with the Montreal factory? A. Now.

XQ27. And you know this gentleman here? A. Yes, Mr. Casson.

XQ28. The manager of the Montreal factory? A. Yes, I have known him for some years.

1482 XQ29. And you have talked to him about this testimony? A. Well, simply stating the one or two answers that I have given but not in any detail; not by way of coaching or anything like that kind because it is simply bald truth.

XQ30. You knew what they wanted you to swear to beforehand? A. They stated why they were here and so I would know.

XQ31. You said that "latterly" the Ideal pen has been known more generally as Waterman—how long a time would you consider as covered by the word "latterly?" A. Well, I would think within the last few years. I only know that people do come in—how long they have been coming in and asking for it I don't

know—but we are about to have a comparatively expensive advertisement made and we are simply going to use the words "Waterman's Ideal Fountain Pens." The word "Waterman's" is going to be, I think, the clearer; I think that is the largest word on the sign, and from that style of advertising (which is the style of advertising the Company does, I believe) from this advertising I have seen I think the public get accustomed to using the word "Waterman."

XQ32. You are going to have these big words under instructions of Waterman Company? A. No, my own; I am getting the design all myself; I am not submitting it to them; at least I don't think I will submit it to them unless they are there.

1484

XQ33. You have not answered my question: How long a period is covered by word "latterly?" A. That will be a difficult question to answer but I would think a good while; I cannot give you instances, therefore it is not evidence I suppose, but I would think for years some might have come in and asked for a Waterman pen but within the last few years I am very positive that they have come in and asked for Waterman pen.

XQ34. How many years are included in the word "few?" A. I cannot answer that because I cannot give you definite instances; I only know—

XQ35. Three or four years? A. I should judge quite that.

XQ36. That is about right? A. I don't know that is right; it might have extended over eight or ten years. I think of it myself so much as a Waterman pen and in dealing with a customer I do not use the word "pen" very often; I simply use the word "Waterman."

1485

XQ37. Is not that because you deal in that exclusively? A. Well, familiarity may make it so so as to save time.

XQ38. If you dealt in A. A. Waterman's pens you would speak of one as L. E. Waterman and one as A. A. Waterman, would not you? A. I never dealt in A. A. Waterman's so I would not undertake to say that. I would certainly expect to draw some distinction so that the public might know what they are getting, because we have people calling on us asking us to repair a pen and they have—

1486 *Oliver B. Staunton*

Mr. Bacon: This is not an answer to any question.

Mr. Watson: I insist that the witness be allowed to finish his answer.

Mr. Bacon: What is the question? (Reporter reads question.) If you dealt in A. A. Waterman's pens you would speak of one as L. E. Waterman and one as A. A. Waterman, would not you?

Mr. Bacon:

XQ39. That can be answered yes or no. A. I would answer that, yes: because I would not wish the public to get one
1487 article thinking it was the other, whether it was L. E. or A. A.

Mr. Watson: Counsel for plaintiff desires it to appear on record that counsel for defendant declines to allow time for witness to finish his answer to the last question.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ40. Has any instances or occasions come to your attention where there has been any confusion between the Waterman's Ideal fountain pen and those marked A. A. Waterman & Co.? A. Yes, sir.

RDQ41. And how have those instances of confusion come to your attention; please state the circumstances as they sometimes
1488 occur in your store? A. I can give at least one that came to me personally. A party came in asking for some repair to be made and I said, "I will have to send this away," and their answer was, "Why, I thought you could do it right here." I said, "No, this is not one of the "Ideal" or of the L. E. Waterman pens; this is an A. A. Waterman pen," and their answer, I remember very distinctly the substance of it without remembering the words, that they had bought it thinking they were getting the Ideal or Waterman pen that was best known and I remember I was greatly annoyed at the time; I do not speak positively but I think that I took the pen back at the usual 25% off or whatever the discount was when that pen came in and supplied

the party with an Ideal Waterman. That has occurred more than once, but this one particular instance I have a very distinct recollection of; it is not an isolated case.

By Mr. Bacon:

RDQ42. Can you give the name of that person? A. I cannot.

RDQ43. Can you give the name of any person that has ever mistaken an A. A. Waterman for an L. E. Waterman pen? A. No. The reason for that would be that as a rule all of our customers from our advertising and the advertising of the Company when they come into us are acquainted with the pen that we handle and these misunderstandings of the pens that the 1490
parties carry occurs with people who are perhaps not on our list of customers or they may be strangers in the city or things of that kind that drop in seeing our sign up.

RDQ44. Do you refuse to repair the A. A. Waterman pen? A. No, we always offer to repair it but we refuse to repair it in our own office because we have no means of doing so. I have been given to understand that the points of the L. E. Waterman pen are made to fit their particular barrels and if we place an L. E. Waterman pen in an A. A. pen it will not give satisfaction and therefore we do not attempt to do it but if the L. E. Waterman pen comes in for repairs we repair it at once if it is at all possible; that is, exchange the point, but if it requires to put in a new point section or barrel we do not 1491
do that. We always offer—I think we can say that without exception—we always offer for to send a man's pen to Montreal whatever make it is for repairs.

Mr. Watson: Counsel by express stipulation waive the signatures of all the witnesses who have been examined under this commission.

Mr. Watson: It is stipulated that the copy of Exhibit "28" may be used with all force and effect as the original and that that is the letter referred to by Mr. Sinclair in his testimony regarding the arrangement between

1492 *Exhibit 28*

Warwick Bros. & Rutter, Limited, and the Modern Pen Company.

Mr. Bacon: I consent to that.

Exhibit 28.

THE MODERN PEN COMPANY

sole selling agent

1493 for

A. A. WATERMAN & CO.

Makers of
Fountain Pens

New York, U. S. A.

22 Thomas St., Cor. Greenwich

Feb. 28, 1908.

Messrs. Warwick Bros. & Rutter, Ltd.,
Toronto, Canada.

Dear Sirs:

1494 Confirming conversation held with your Mr. N. A. Sinclair yesterday, we have to say that in consideration of your purchasing from this Company at once a stock of Lincoln fountain pens of the type branded "A. A. Waterman & Co., New York," same to consist of some of all numbers and to the amount of $1,000 net in Canada; and also in consideration of your continuing to purchase these pens regularly, maintaining on hand at all times a stock of not less than $1000 net worth in Canada; and also in consideration of your using every possible endeavor to sell these goods extensively and widely and secure the maximum business possible upon same in the Dominion of Canada by all the means at your disposal; and also in consideration of your carrying in stock, selling, or offering for sale, directly or indirectly, no other

Exhibit 28 1495

line of fountain pens of similar grade and price, we make you discounts from the list prices of said Lincoln fountain pens as follows:

On the	#103,	American	List	Price	$1.00, 33⅓ & 15%
" "	#303,	"	"	"	$1.50, 50% & 15%
" "	#503,	"	"	"	$2.00, 50% & 15%
" "	#603,	"	"	"	$2.50, 50% & 15%
" "	#703,	"	"	"	$3.00, 50% & 15%

The above list prices are for plain stock only, plain black, mottled or chased black. Gold mounted pens will be furnished in this line, in all of the numbers if desired, the same to be mounted two 3/16" bands on holders at $1.00 each in addition to any 1496
of the above list prices; for two 3/8" bands mounted upon the holders $1.50 each in addition to the above list prices.

Terms upon all shipments strictly thirty days net; f. o. b. New York, no duty or transportation charges paid by this Company.

A special allowance will be made you of 5% of your net purchases to be used by you solely for the purchase of show cases to be furnished to customers purchasing this line of fountain pens from you—for the display of such fountain pens.

It is understood that should any, or all, of the above conditions of this sale not be carried out by you entire, this special offer immediately lapses and becomes void at the option of this 1497
Company.

As to delineation of territory in which these goods are to be sold, we have to say that our own travellers will visit all trade, selling all of our lines, at our own prices and conditions, in the cities of Quebec, Montreal, Ottawa, Hamilton, London and Toronto; but this does not preclude you from operating in this same territory. Other towns which will be made by our travellers in the Dominion, selling our Modern line of pens and sundries alone and excluding the Lincoln line, will be Brockville, Kingston, Belleville, Coburg, Port Hope, Peterborough, Lindsay, Brantford, Galt, Guelph, Berlin, Stratford, Woodstock, St.

1498 *Exhibit 28*

Thomas and Chatham, thereby leaving these towns open to you for general sale upon the Lincoln line.

The Company does not hold itself responsible in any way as to ultimate disposition of goods, the intent of this offer being not to sell Lincoln pens directly in the towns excepted herein or to sell indirectly where the ultimate disposition of the goods is known.

The said Lincoln goods herein specified are subject to a guarantee against obvious defects in workmanship and material, the interpretation of such defects remaining with the experts of this Company. These goods are straight sale goods and are not sub-
1499 ject to return, or exchange, except at the option of this Company.

The above arrangement may be terminated at any time on notification of either party to the other.

This arrangement contemplates merely the line of "Lincoln" pens branded "A. A. Waterman & Co., New York" and does not in any sense conflict with, or restrict, the sale of Modern or other pens within the Dominion.

Yours truly,
THE MODERN PEN CO.
(Sgd.) C. E. Marling (?)
Vice-President.

Dict. to N. H.
Feby 28th, 1908.
1500 The above arrangement accepted
for Warwick Bros. & Rutter, Ltd.
by N. A. Sinclair.

Depositions under this commission have now been closed.

Vol. II

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1914

No. [illegible]54

L. E. WATERMAN COMPANY, APPELLANT,

vs.

MODERN PEN COMPANY.

FILED SEPTEMBER 7, 1912.

No. [illegible]72

MODERN PEN COMPANY, APPELLANT,

vs.

L. E. WATERMAN COMPANY.

FILED DECEMBER 10, 1912.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

(23,350 and 23,451)

INDEX.

PLEADINGS, ETC.

	Page	Vol.
Subpoena	1	I
Complaint (Original)	16	I
Demurrer	1135	III
Order Overruling Demurrer	14	I
Order Allowing Amendment to Complaint	14	I
Complaint (Amended)	16	I
Answer	1139	III
Replication	28	I
Order Fixing Time to Take Proofs	29	I
Stipulation that officers before whom deposition taken competent	30	I
Opinion (Memorandum), Judge Hough on Preliminary Injunction	1108	II
Preliminary Injunction Order (Original	1111	II
Opinion—Court of Appeals	1114	II
Preliminary Injunction Order (modified	1118	II
Offer to Limit Proofs	1122	II
Opinion, Hand, D. J.	1861	III
Decree	1874	III
Petition for Appeal and Allowance	1874	III
Assignments of Error	1877	III
Bond	1881	III
Citation	1882	III
Clerk's Certificate	1884	III

COMPLAINANT'S TESTIMONY.

	PAGE	Vol.
Allen, Charles G.,		I
Direct	136	
Cross	137	
Redirect	140	
Allen, Harry H.,		
Direct	383	
Cross	385	
Redirect	390	
Ash, Louis W.,		
Direct	330	
Cross	333	
Redirect	335	
Bailey, Ralph S.,		
Direct	380	
Cross	381	
Redirect	382	
Baker, Herbert,		
Direct	404	
Cross	408	
Redirect	410	
		II
Barkley, Richard W.,		
Direct	703	
Cross	706	
Barry, Kevin W.,		
Direct	564	
Cross	567	
Bechtol, Charles W.,		
Direct	501	
Cross	503	
Redirect	504	

	PAGE	Vol.
		I
Bennett, Arthur Edward,		
Direct	458	
Cross	459	
Bonenfant, George J.,		
Direct	451	
Cross	453	
Bradford, Donald D.,		
Direct	420	
Cross	422	
Brink, Henry R.,		
Direct	423	
Cross	425	
Redirect	427	
		II
Brooks, George F. T.,		
Direct	518	
Cross	521	
Brown, Hubert H.,		
Direct	487	
Cross	488	
Redirect	490	
		I
Brown, William Foster,		
Direct	443	
Cross	445	
Redirect	447	
Buhrman, Walter A.,		
Direct	397	
Cross	400	
Redirect	402	

	PAGE	Vol.
		I
Burgoyne, Sidney J.,		
Direct	373	
Cross	374	
Redirect	376	
		II
Burkhardt, Alfred,		
Direct	516	
Cross	516	
Redirect	517	
		I
Chaffee, Arthur N.,		
Direct	344	
Cross	346	
Redirect	347	
		II
Chaplin, William J.,		
Direct	526	
Cross	532	
Redirect	543	
(Recalled) Direct	573	
Cross	573	
Redirect	575	
		I
Cooper, John Albert,		
Direct	353	
Cross	356	
Redirect	357	
Cormier, Victor C.,		
Direct	178	
Cross	180	
Cummings, Arthur,		
Direct	430	
Cross	432	

	PAGE	Vol.
		I
Ferris, William I.,		
Direct	32	
Cross	39	
Redirect	50	
(Recalled) Direct	72	
Cross	76	
Redirect	85	
		II
Direct	752	
Cross	753	
Redirect	760	
		I
Fleharty, Rolland E.,		
Direct	390	
Cross	392	
		II
Frazer, William G.,		
Direct	773	
Cross	777	
Rediret	786	
		I
Hebert, Joseph Louis,		
Direct	433	
Cross	436	
Redirect	438	
Hollander, Harry M.,		
Direct	126	
Cross	131	
Redirect	133	
		II
Irvine, Frederick Brice,		
Direct	735	
Cross	737	

	PAGE	Vol.
		I
Joel, Ephraim M.,		
Direct	357	
Cross	359	
Redirect	360	
Jousse, Paul Theophile Felix,		
Direct	440	
Cross	442	
Katner, Edward J.,		
Direct	183	
Cross	198	
Redirect	233	
Kernan, William Hill,		
Direct	243	
Cross	266	
Redirect	275	
		II
Kinsey, A. H.,		
Direct	510	
Cross	511	
Redirect	512	
Kneeland, George P.,		
Direct	513	
Cross	514	
Redirect	514	
Lancaster, Warren N.,		
Direct	608	
Cross	616	
Redirect	642	
		I
Liddell, Robert C.,		
Direct	158	
Cross	163	
Redirect	173	

	PAGE	Vol.
		II
Lutzer, Ernest,		
Direct	731	
Cross	733	
		I
Mason, Jr., H. Lee,		
Direct	353	
Cross	354	
		II
Mullineux Matthew,		
Direct	589	
Cross	592	
Redirect	598	
Nunn, J. Edward,		
Direct	581	
Cross	585	
Redirect	587	
Parcels, Harry M.,		
Direct	603	
Cross	605	
Poulson, Harper W.,		
Direct	559	
Cross	561	
Redirect	563	
Raymond, Walter B.,		
Direct	650	
Cross	669	
(Recalled) Direct	650	
Cross	740	
Redirect	744	
		I
Rogers, Henry W.,		
Direct	342	

	PAGE	Vol.
		I
Saadi, John,		
Direct	114	
Cross	118	
Redirect	121	
		II
Seiler, John,		
Direct	765	
Cross	766	
Redirect	769	
		I
Sell, Frank N.,		
Direct	413	
Cross	415	
Redirect	418	
Sinclair, Norman A.,		
Direct	468	
Cross	474	
Redirect	474	
Southerland, James,		
Direct	464	
Cross	465	
Staunton, Oliver B.,		
Direct	491	
Cross	493	
Redirect	496	
		II
Steinmuller, Theodore A.,		
Direct	1124	
Cross	1126	
Redirect	1129	

	PAGE	Vol.
		I
Stephens, Edward M.,		
Direct	278	
Cross	279	
Redirect	281	
		II
Stevens, Frederick W.,		
Direct	791	
Cross	798	
Redirect	813	
		I
Stott, Charles G.,		
Direct	395	
Cross	396	
Tandy, Van Brunt,		
Direct	147	
Cross	149	
Redirect	154	
		II
Trory, Charles E.,		
Direct	505	
Cross	507	
Redirect	509	
		I
Waldo, Richard H.,		
Direct	286	
Cross	290	
Warwick, Charles E.,		
Direct	481	
Cross	483	
Redirect	484	
Waterman, Arthur A.,		
Direct	93	
Cross	110	
Redirect	112	

	PAGE	Vol.
		II
Watson, Samuel S.,		
Direct	745	
Direct	746	
Wheeler, Howard L.,		
Direct	556	
Cross	557	
Redirect	558	
		I
Whiting, Du Monte A.,		
Direct	362	
Cross	363	
Redirect	364	
Whiting, Willis P.,		
Direct	368	
Cross	369	
Wilson, William J. C.,		
Direct	485	
Cross	486	
		II
Wood, Florence W.,		
Direct	523	
Cross	525	
(Recalled) Direct	570	
Cross	571	
		I
Wood, Walter,		
Direct	476	
Cross	477	
Redirect	478	

COMPLAINANT'S EXHIBITS.

	Offered page	Printed page	Vol.
Advertisements:			
11.—Wolfson Bros.	332	337	I
23.—Warwick Bros. & Rutter	473	848	II
24.—Warwick Bros. & Rutter	473	849	
45.—Barnes & Co., Ltd.	198	866	
100.—A. A. Waterman Circular of Mar. 1/99	547	578	
101.—A. A. Waterman Circular of Apr. 20/99	548	579	
102.—Rhodes Lockwood Circular	548	580	
139.—Aloe	1359	954	
141.—Lazarus	1369	955	
Letters:			
			I
12.—Wolfson and Modern Pen Co.	334	338	
17.—Waterman to Hollander	127	134	
20.—Saadi to Geyer, Dec. 7-09	62	63	
25.—Woods & Co. to Waterman	476	479	
26.—Woods & Co. to Waterman	477	479	
31.—Wotherspoon to Waterman Co., Oct. 13-10 and Nov. 7-10	189	851	II
32.—Arnold to Waterman Co., Aug. 29-10	189	852	
33.—Chalmers to Waterman Co., Jan. 2-11	189	853	
34.—Gibson & Huyck to Waterman Co., Sept. 20-10, Nov. 11-10 and Nov. 24-10	190	853	
35.—Post Card, McKinnon to Waterman Co., Jan. 6-11	190	855	

Vol. II

	Offered page	Printed page
36.—Cormier to Waterman Co., Oct. 29-07	190	855
37.—Newton to Waterman Co., April 25-10	191	856
39.—Post Cards, Neudorf to Waterman Co., Mch. 6-11, Feb. 21-11	192	857
41.—Smyth to Waterman, Dec. 28-09	192	858
42.—Cason to Waterman Co., Sept. 15-09 and Sept. 27-09	192	858
46.—Postmaster's Letter, Montreal to Davidson & Wainwright, April 29-09		867
47.—Gifford to Waterman, Sept. 29-09	247	868
48.—Phlegar to Waterman, Dec. 22-09 and Jany. 8-10	247	871
49.—Hall to Waterman, Sept. 29-09	248	872
50.—Brentano to Waterman, Oct. 19-09	248	874
51. Harding to Waterman, Oct. 27-07	249	874
52.—Foley to Waterman, Feb. 11-11	249	875
53.—Broadalbin Drug Co. to Waterman, Dec. 31-10	249	876
55.—Bowie to Waterman, Jan. 11-11	250	878
56.—Delatush to Waterman, Jan. 16-11	250	879
58.—York to Waterman, Jan. 28-10	251	880

Vol. II

	Offered page	Printed page
59.—Waterman to Ewing, July 27-10	251	880
60.—Mimms to Waterman, Mar. 8-10	251	882
61.—Steele to Waterman, Jan. 5-10	252	884
62.—Burdette to Waterman, Feb. 1-11	252	885
63.—Hoyt to Waterman	252	885
64.—Warren to Waterman, March 25-10	252	885
65.—Wisewell to Waterman, Nov. 16-09	253	887
66.—Lee to Waterman, Nov. 24-09	253	888
67.—Innes to Waterman, Oct. 26-08	254	890
68.—Hull to Waterman, Oct. 16-09	254	891
69.—Shumway to Waterman, Jan. 17-10	254	891
70.—Fincik to Waterman, Sept. 8-10	255	892
71.—Lendrum to Waterman, March 3-10	255	893
72.—Lanyon to Waterman, Jan. 28-11	255	894
73.—Burkley to Waterman, Jan. 30-10	256	895
74.—Partridge to Waterman,, Dec. 8-10	256	896
75.—Hulberg to Waterman, Oct. 13-09	256	897
76.—Gold to Waterman, Nov. 3-09	257	898

Vol. II

	Offered page	Printed page
77.—Heisler to Waterman, Jan. 10-11	257	899
78.—Scannell to Waterman, Nov. 22-09	258	900
79.—AAllen to Waterman, Nov. 2-09	258	901
80.—Newstedt to Waterman, May 27-09	258	902
81.—Kaufman to Waterman, Dec. 13-09	258	903
82.—Tailoring Co. to Waterman, Sept. 24-09	259	904
83.—Tillson to Waterman, April 11-10	259	905
84.—Mandaville to Waterman, April 25-10	259	906
85.—Gogburn to Waterman, Feb. 11-10	259	906
86.—McGrew to Waterman, Nov. 19-09	260	907
87.—Neall to Waterman,	260	908
88.—Burgess to Waterman, Dec. 6-10	260	908
89.—Klappenbach to Waterman, Jan. 19-11	261	910
90.—Dow to Waterman, Jan. 31-11	261	911
91.—Menges to Waterman, Jan. 21-11	261	911
92.—Bryan to Waterman, Jan. 16-11	262	913
93.—Brosius to Waterman, Jan. 6-11	262	913
94.—Williams to Waterman, Dec. 30-10	262	915

	Offered page	Printed page	Vol
			II
95.—Morrow to Waterman, Feb. 27-11	263	917	
96.—Williamson to Waterman, Dec. 22-10	263	918	
97.—Spencer to Waterman, April 18-10	263	919	
98.—Hartman to Waterman, April 18-10	263	920	
99.—Roberts & Son Co. to Waterman June 17-10	264	921	
99a.—Hauk to Waterman, Jan. 29-04		922	
135.—Committee letter to Frazer on organization of Modern Pen Co., June 21,05	1325	940	
136.—Bacon to Frazer, Geyer & Waterman	1327	942	
142.—Watson & Raymond to Chapman, April 18-07 and April 20-07	1375	751	
1 of Jan. 6, 1911. Plaintiff's			I
letter to Herbert Baker	406	412	
Miscellaneous Manuscripts:			
			II
6.—Package of envelopes	36	956	
9.—Notice to discontinue use A. A. Waterman & Co.	38	841	
18.—Saadi decree	129	842	
			I
19.—Bill of A. A. Waterman & Co. to Saadi, Dec. 4/09	131	146	
27.—Walter Woods & Co. and Brown Bros. invoice	477	480	

	Offered page	Printed page	Vol.
			I
28.—Modern Pen Co. and Warwick Bros. & Rutter Agreement	497	498	
43.—Four papers of W. R. & S. A. Campbell	193	860	II
44.—Two papers, Bennett Exchange Slip	196	861	
44a.—Package of Envelopes	194	862	
112.—Muir & Co. Receipt	652	699	
114.—Thayer Receipt	656	699	
116.—Jensen, Herzer & Jeck Receipt	661	699	
120.—Adam, Melville & Anderson Sales Slip	664	700	
121.—Three Saadi Invoices	669	700	
126.—Lutzer Subpoena	735	923	
127.—Frazer and Geyer Affidavit	1304	923	
128.—Frazer and Geyer Complaint	1304	927	
129.—Geyer Affidavit	1318	931	
130.—Justice Giegerich order appointing receiver for A. A. Waterman & Co.	1308	933	
131.—Judgment of June 4 of Frazer & Geyer Co. v. Frazer, Geyer & Waterman	1311	936	
132.—Judgment in Wm. E. Chapman Inc. v. Frazer & Geyer Co., Frazer, Geyer and Waterman	1313	937	
133.—Transfer to Frazer & Geyer Co. by A. A. Waterman & Co.	1315	938	

	Offered page	Printed page	Vol. II
134.—Sheriff's transfer to Quackbush	1317	939	
137.—Chapman Affidavit	1329	944	
138.—Henderson Affidavit	1329	951	
Patents:			
22.—Stone No. 744,642	70	710	
122.—Vale No. 290,820	709	714	
123.—Leutner No. 387,686	709	723	
124.—Warriner No. 713,927	709	727	
Photographs, etc.:			
21.—Medal facsimiles	74	846	
29.—Photograph of Carey's Window	174	850	
117.—J. Basheim, Picture of Store	662	697	
118.—J. Basheim, Picture of Store	663	698	
1 of April 7, 1911. Photograph Standard Drug Co. Window	514	515	
Physical:			
7.—Complainant's Pen	36		
8.—Complainant's Pen	37		
10.—Defendant's Pen	56		
14.—Royal Ideal Pen	115		
15.—Royal Ideal Box	116		
30.—Pen bought of Standard Drug Co.	179		

	Offered page	Printed page	Vol.
			I
54.—Broadalbin Drug Co.'s Pen	250		
57.—Delatush's pen	250		
			II
103.—Box of "Waterman" Pens	570		
104.—"Waterman" Pen (Silver)	577		
			I
106.—H. H. Allen Pen	385		
			II
107.—Molineaux Pen	590		
108.—Molineaux Box	590		
109.—Purcell Pen	608		
110.—Lancaster Gold Pen	649		
111.—Muir & Co. Pen and Box	652		
125.—Lutzer Pen	732		
			III
140.—A. A. Waterman's Safety Pen	1529		
			I
38.—Boyden Box	191		
Publications, etc.:			
13.—Good Housekeeping	286		
16.—Extracts from Good Housekeeping	288	295	
Trade Marks:			
			II
1.—"Ideal" No. 35,048	34	821	
2.—"Ideal" No. 49,817	34	825	
3.—"Waterman's Ideal Fountain Pen, N. Y.," No. 35,849	34	829	

Vol. II

	Offered page	Printed page
4.—"Waterman's Ideal Fountain Pen, N. Y.," No. 49,478....	34	833
5.—"Waterman's" No. 59,703....	34	837

DEFENDANT'S TESTIMONY.

III

	PAGE
Ayer, M. Isabel,	
Direct	1456
Cross	1460
Redirect	1473
Recross	1475
Bartlett, Harry C.,	
Direct	1147
Cross	1156
Redirect	1183
Blatz, Max L.,	
Direct	1478
Cross	1480
Redirect	1495
Dooley, Josephine,	
Direct	1434
Cross	1438
Redirect	1451
Recross	1454
Flewitt, Eugene,	
Direct	1186
Cross	1188
Redirect	1198

Vol. III

PAGE

Geyer, Hobart W.,
Direct 1246
Cross 1287
Redirect 1376
Recross 1390

Kaiser, John W.,
Direct 1535
Cross 1538
Redirect 1541
Recross 1543

Nault, James A.,
Direct 1562
Cross 1566
Redirect 1571
Recross 1572

Rightmire, Fred R.,
Direct 1208
Cross 1216
Redirect 1240

Spear, Asa A.,
Direct 1589
Cross 1592

Sweeney, Timothy,
Direct 1577
Cross 1582
Redirect 1586
Recross 1587

Williams, Ward D.,
Direct 1594
Cross 1595

Vol. III

PAGE

Redirect 1595
Recross 1597

Wilson, Louise S.,
Direct 1548
Cross 1551
Redirect 1559
Recross 1561

Van Valer, DeWitt C.,
Direct 1495
Cross 1507
Redirect 1525
Recross 1529
(Recalled) Direct 1531
Cross 1532
Redirect 1534

DEFENDANT'S EXHIBITS.

Advertisements:

	Offered page	Printed page
G.—Advertisement contained in Exhibit F	457	1616
A-64.—Advertisement in Cornell Window	1389	1765

Agreements, etc.:

A-4.—Articles of copartnership, Jan. 9/01, between Waterman, Frazer and Geyer	1253	1635
A-5.—Endorsement, Dec. 12/01,		

	Offered page	Printed page	Vol. III
on articles of copartnership extending forty years	1253	1639	
A-6.—Agreement, Aug. 27/01, between Frazer & Geyer Co. and William G. Frazer and Hobart W. Geyer	1254	1639	
A-7.—Agreement, Dec. 12/01, between Frazer & Geyer Co. and Waterman	1254	1642	
A-8.—Agreement, Dec. 12/01, between Frazer & Geyer Co. and Waterman & Co.	1254	1645	
A-9.—Modification, June 11/04, of articles of copartnership, Jan. 9/01	1254	1648	
A-10.—Further modification, Feb. 11/05, of former articles of copartnership	1254	1650	
A-11.—Agreement, Feb. 11/05, between Frazer & Geyer Co. and Waterman	1254	1659	
A-12.—Temporary agreement, May 27/05, between Waterman and Chapman, relative to reorganization	1254	1666	
A-13—Articles of copartnership, June 12/05, between Waterman, Chapman and Chapman. Paragraph 8 of said contract contains the assignment of the trade name of A. A. Waterman	1254	1668 1669	
A-14.—Agreement, July 5/05, be-			

	Offered page	Printed page	Vol. III
tween Modern Pen Company and Waterman	1255	1673	
A-58.—Draft proposed agreement, defendant and others with Aiken-Lambert Co.	1275	1724	
A-59.—Draft proposed contract between Modern Pen Co. of West Virginia and Modern Pen Co. of New York, dated Dec. , 07	1275	1727	
Circulars, etc.:			
B of Apl. 10/11. Circular issued by plaintiff purporting to be an extract from the order of this court entered Dec. 10/10	676	1617	
A-15—Circular of new partnership signed by Waterman & Co.	1255	1678	
A-41.—Circular addressed to the reorganization committee of the Frazer & Geyer Co., Apr. 26/05	1266	1712	
A-63.—Two placards and circular	1388	1764	
Letters:			
C of Mch. 27/11. Brink to defendant	1153	1621	
D of Mch. 27/11. Defendant to Brink	1153	1621	

Vol. III

	Offered page	Printed page
E of Mch. 27/11. Defendant to Bartlett	1155	1622
G of Mch. 27/11. Bartlett to defendant	1155	1624
F of Mch. 27/11. Defendant to Bartlett	1155	1625
H of Mch. 27/11. Bartlett to defendant	1155	1627
I of Mch. 27/11. Defendant to Bartlett	1155	1628
J of Mch. 27/11. Defendant to Bartlett	1155	1629
K of Mch. 27/11. Defendant to Bartlett	1155	1630
M of Mch. 27/11. Bartlett to defendant	1156	1630
L of Mch. 27/11. Defendant to Bartlett	1156	1631
N of Mch. 27/11. Bartlett to defendant	1156	1623
A of Apl. 10/11. Ramsey to Waterman & Co.	676	1617

(Cleveland Correspondent).

A18.—Teller to Geyer, Nov. 10/09	1261	1681
A-17.—Watson & Raymond to Standard Drug Co., Nov. 11/09		1682
A-19.—Defendant to Teller, Nov. 12/09	1261	1683
A-20.—Standard Drug Company to defendant, Nov. 12/09	1261	1684

	Offered page	Printed page	Vol. III
A-21.—Defendant to Standard Drug Company, Nov. 18/09.....	1261	1684	
A-32.—Standard Drug Company to defendant, Nov. 18/09	1264	1686	
A-22.—Standard Drug Company to defendant, Nov. 19/09	1261	1687	
A-23.—Teller to Geyer, Nov. 19/09	1261	1687	
A-24.—Defendant to Teller, Nov. 23/09	1261	1688	
A-25.—Defendant to Standard Drug Company, Nov. 23/09.....	1262	1688	
A-33.—Bushnell to defendant, Dec. 1/09	1264	1689	
A-34.—Defendant to Bushnell, Dec. 2/09	1264	1691	
A-26.—Teller to Geyer, Dec. 15/09	1262	1692	
A-27.—Defendant to Teller, Dec. 17/09	1262	1693	
A-35.—Waterman Co. of Canada to Ryan, Jan. 13/10.....	1264	1708	
A-36.—Plaintiff to Hammell, Feb. 1/10	1264	1709	
A-37.—Dugan to Waterman & Co., June 22/10	1264	1709	
A-38.—Defendant to Dugan, June 25/10	1265	1710	
A-40.—Tucker to Percival & Co., Apl. 4/10	1265	1712	

Vol. III

Correspondence Relating to Plaintiff's Infringement of One of Defendant's Patents.

	Offered page	Printed page
A-50.—Bacon to plaintiff, Apl. 20/09	1274	1719
A-51.—Plaintiff to Bacon, Apl. 30/08	1274	1719
A-55.—Bacon to plaintiff, May 19/08	1274	1720
A-56.—Plaintiff to Bacon, May 21/08	1275	1720
A-57.—Bacon to plaintiff, May 26/08	1275	1722

Correspondence Relative to Proposed Sale.

A-45.—Elliott to Watson, March 5/09	1273	1723
A-46.—Watson to Chapman, Mch. 7/08	1273	1723
A-47.—Chapman to Watson, Mch. 19/08	1274	1724
A-48.—Chapman to Watson, Mch. 28/08	1274	1731
A-49.—Watson & Raymond to Chapman, Mch. 30/08	1274	1732
A-52.—Chapman to Watson, May 7/08	1274	1733
A-53.—Watson to Chapman, May 8/08	1274	1733
A-54.—Chapman to Watson, May 11/08	1274	1734

	Offered page	Printed page	Vol. III
A-60.—Thirty-nine letters of commendation of defendant's pen..	1283	1735	
A-61.—Nineteen letters of denunciation of plaintiff's pens..	1283	1756	
A-62.—Weaver to Bacon, May 10/05, enclosing circular, recommending that Frazer & Geyer Co. be put into hands of a receiver	1280	1773	
A-66.—Waterman to Oriental Bank, June 14/05	1430	1776	
Remainder of Saadi correspondence		1779	
Miscellaneous Manuscripts:			
A.—(a) Defendant's offer, Dec. 12/10, that a permanent decree be entered conforming to the terms of the final order after the preliminary injunction	32	1601	
(b) Similar offer, May 17/11, made at close of the testimony	1207	1602	
B.—Decree of Sept. 3/98	45	1603	
C.—Memorandum given by Mr. Saadi on ordering penholders stamped "Royal Ideal"	119	1612	
A of Mch. 27/11. Business card of H. C. Bartlett, Jr., representing defendant	1148	1619	
B of Mch. 27/11. Order of Buhrman Brothers	1151	1620	
A-1.—Business card of Eugene Flewitt, representing defendant	1187	1632	

Vol. III

	Offered page	Printed page
A-2.—Notice of Gratz Nathan, receiver of William G. Frazer	1252	1633
A-3.—Order appointing Gratz Nathan receiver, June 7/05	1253	1634
A-16.—Statement of all pens and penholders (holders marked Royal Ideal pen) sold by defendant to John Saadi, showing profit on holders of $21.60	1258	1680
A-28.—Complaint of L. E. Waterman Company vs. Standard Drug Co.	1262	1694
A-29—Permanent injunction in L. E. Waterman Company vs. Standard Drug Co.	1262	1703
A-30.—Notice of plaintiff "To all whom it may concern" attached to copy of Exhibit A-29, Cleveland decree	1262	1706
A-31.—Certificate, Feb. 4/10, of Chapman Co., authorizing them to do business under the name of "A. A. Waterman & Co.	1263	1706
A-39.—Memorandum of different styles of A. A. Waterman & Co. pens that correspond in quality to the L. E. Waterman Company pens	1265	1711
A-42.—Account of Charles E. Trory of Crestline, Ohio, Apl. 11/11	1266	1714

	Offered page	Printed page	Vol. III
A-43.—New imprinting of the Lincoln pen	1267	1716	
A-44.—Translation of the Italian complaint, L. E. Waterman Company vs. Guido Cabrini, July 2/10	1271	1717	
A-65.—Minutes of special meeting of Frazer & Geyer Co., Apl. 19/05 and Apl. 26/05	1430	1766	
A-67.—Card showing different processes through which the pen it put in its manufacture	1507	1778	
A-68.—Six cards showing methods of manufacture	1577	1778	
Physical:			
F.—Lincoln fountain pen box	457	1615	
A and B of Apl. 8/11. Lancaster pen points	646 and 647	1615	
A-69.—Two of plaintiff's pen points, soft iridium	1577	1778	
Registrations:			
D.—Saadi's registration of label "Royal Ideal"	120	1613	
E.—Saadi's registration of label "Royal Ideal"	120	1614	

COMPLAINANT'S SUPPLEMENTAL PROOFS.

Vol. III

PAGE

Edgar R. Accetta,
Direct 1788
Cross 1790
Redirect 1796
Recross 1799
Redirect 1809
Recross 1810
Redirect 1814
Recross 1816
Redirect 1820

Order permitting complainant to introduce copy of Italian Opinion in evidence..... 1825

	Offered page	Printed page
Complainant's Exhibit No. 143. Decision of the Italian Court.....	1785	1827
Complainant's Exhibit No. 144. Translation	1786	1843

ADDITION TO INDEX.

	Page
Opinion	1893
Petition of L. E. Waterman Company for rehearing	1894
Opinion on petition for rehearing	1901
Petition of the Modern Pen Company for a modification	1901
Affidavit of Hobart W. Geyer	1903
Order denying further changes	1906
Election by the L. E. Waterman Company	1907
Order denying petition for rehearing	1908
Final decree	1908
Petition for appeal by the L. E. Waterman Company	1909
Affidavit of Frank D. Waterman	1909
Assignment of errors by the L. E. Waterman Company	1910
Order granting appeal of L. E. Waterman Company	1912
Bond on appeal of L. E. Waterman Company	1912
Clerk's certificate	1915
Citation to Modern Pen Company and service	1916
Petition for appeal by the Modern Pen Company	1917
Affidavit of Hobart W. Geyer	1917
Assignment of errors by Modern Pen Company	1918
Order allowing appeal of Modern Pen Company	1919
Bond on appeal of Modern Pen Company	1920
Clerk's certificate	1921
Citation to the L. E. Waterman Company and service	1922

1501

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK,

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

vs.

MODERN PEN COMPANY,
Defendant.

1502

Testimony taken on the final hearing of the above entitled action pursuant to the rules of equity, and Revised Statutes in such cases provided before John W. McCarron, a Notary Public, in and for the County of Crawford, State of Ohio, at his office at 115 and 1/2 West Main Street in the City of Galion, Crawford County, Ohio, on the 6th day of April, A. D., 1911, pursuant to notice hereto annexed.

Appearances:

Walter B. Raymond, of Counsel for Plaintiff.
Alexander S. Bacon, Solicitor for Defendant.

1503

CHARLES W. BECHTOL, witness for plaintiff, being first duly sworn, deposes as follows:

Direct-examination by Mr. Raymond:

Q1. What is your name, residence and occupation? A. Charles W. Bechtol, residence, Galion, Ohio, and by occupation a jeweler.

Q2. How long have you carried or handled fountain pens? A. About seven or eight years.

Q3. What kind of fountain pens? A. I used to handle Beltzer & Wilson, and have a few of them on hand yet.

1504 *Charles W. Bechtol*

Q4. Did you buy any fountain pens during the fall of last year? A. Yes, sir.

Q5. How long and how have you known of the Waterman's Ideal fountain pens? A. I read of them four or five years ago in the trade papers.

Q6. Under what name did you know of the Waterman's Ideal fountain pens? A. I think the L. E. Waterman, I don't know anything else.

Q7. Did you know and call these pens, Waterman pens?

Objected to as leading.

1505 A. "Waterman" was stamped on the tube. I couldn't call them anything else.

Q8. Will you state in your own words what occurred when you bought fountain pens in October last? A. I don't remember anything more than that they were Waterman pens, and it didn't need any argument.

Q9. Did the man who sold you these pens call them Waterman pens?

Objected to as leading.

A. Yes, when he came in as an agent, he said he had the Waterman pens for sale.

Q10. Did you give him an order? A. Yes, I gave him an order.

1506 Q11. Did you receive the pens at the time you gave the order, or how long after? A. It usually takes about a week from New York. It might have been longer than that. I did not pay any special attention to that.

Q12. Under what name did you sell these pens to the public?

Objected to as immaterial.

A. As the Waterman pen. That was marked on the barrel, and I couldn't sell them as anything else.

Q13. Did the man who sold you these pens instruct you as to the name under which they should be sold to the public?

Objected to as immaterial.

A. No, not that I remember of.

Q14. Did he call these pens "Waterman pens" in speaking of them to you? A. Yes.

Q14½. Did he call them "A. A. Waterman pens" in speaking of them to you? A. He may have done that, I could not say.

Q15. All that you remember then is the use of the word "Waterman?" A. That is all.

Q16. Did the salesman say that he represented the Modern Pen Co.? A. I do not remember.

Q17. When and how did you first learn that you did not have "Waterman's Ideal Fountain Pen?" A. I think that the first 1508
that I knew of it, was a man came along selling fountain pens, I don't know who he represented. He said that what I had was not the original "Waterman Fountain Pen."

Q18. Did you up to that time believe that you had the genuine Waterman pen? A. I thought there was only one make of that name.

Q19. The salesman who sold you did not tell you there were two? A. I don't remember that part of it.

Q20. If he had told you that they were not the original Waterman pen, would you have bought them? A. I don't know whether I would or not; that is a question.

Q21. As a matter of fact, however, knowing the name "Waterman" you bought the pens without any question? A. Yes, 1509
that is it, exactly.

CROSS-EXAMINATION by A. S. Bacon:

XQ22. Did the man who sold you these pens hand you his card? A. I don't remember.

XQ23. Did he tell you that he was selling the "A. A. Waterman" pens? A. He might have said that, but I was not particularly acquainted with the initials. I thought there was only one Waterman pen.

XQ24. Did he leave with you a memorandum of sale, partly written and partly printed? A. I do not remember. They

most all do. When the goods come I check them up with the memorandum of sale, and then throw it away.

XQ25. Then in this instance there must have been a memorandum of sale left by the salesman? A. Well, I don't know about that. It is too long ago.

XQ26. Did you not see on the bottom of this memorandum of sale in very large letters, the words "Modern Pen Co., sole selling agents, of A. A. Waterman & Co.?"

Objected to on the ground that it does not appear affirmatively that any memorandum of sale was given the witness.

1511 A. I don't remember about that.

XQ27. Was the second salesman who came to you a representative of the L. E. Waterman & Co.? A. I think he was a representative of Beltzer & Wilson.

XQ28. Did Mr. Raymond here present come to see you sometime ago? A. Yes, sir.

XQ29. It might have been a couple of months ago? A. I am not sure as to the exact time.

XQ30. Did he ask you to testify in this case? A. Yes.

XQ31. What did he say to you? A. I think he wanted to know if I had the original Waterman fountain pen. He wanted me to make affidavit as to my purchasing the other pen, and what I have here testified to.

1512 XQ32. Did he tell you what kind of testimony he wanted you to give? A. I am not sure, but I think that he wanted to see the bill. I did not have this.

RE-DIRECT EXAMINATION by Mr. Raymond:

RDQ33. Did these pens that you purchased as Waterman pens prove satisfactory to your customers? A. No, sir.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ34. What did they retail for? A. $1.50 and $2.50.

1513

RXQ35. Did you send any of them back for repairs? A. No, sir; I have two laying on the counter now.

RXQ36. How many did you buy in all? A. I believe that it was one dozen.

RXQ37. Were the others all right? A. All the others were all right, three or four I have not sold yet.

CHARLES W. BECHTOL.

CHARLES E. TRORY, a witness on behalf of the plaintiff, being first duly sworn, deposes as follows:

1514

Direct-examination by Mr. Raymond:

Q1. What is your name, residence and occupation? A. Charles E. Trory, Crestline, Ohio, and a druggist by occupation.

Q2. What makes of fountain pens have you carried and how long have you carried them? A. I have had Mooney, the Parker, and the A. A. Waterman, and I have carried fountain pens for about eight years.

Q3. How long and how have you known Waterman's Ideal fountain pens? A. About ten years. I first became acquainted with the Waterman's Ideal fountain pens at Fostoria, Ohio, where I carried them in stock.

Q4. Under what name did you know "Waterman's Ideal Fountain Pens?" A. Under the regular name "Waterman's Ideal Fountain Pen."

1515

Q5. Under what name were these pens usually asked for by customers? A. Waterman.

Q6. Now, will you tell in your own words all of your experiences with the A. A. Waterman pens from the time that you first purchased them to the present? A. A man came along at first and I was looking for a self-filling pen, and it appealed to me. He said that it was a Waterman, and I thought at first it was a genuine Waterman, until he explained to me, that it was not, and went under the name of "Modern Fountain

1516 *Charles E. Trory*

Pen." My experience with it was not very pleasing as the pens were entirely unsatisfactory. Most of them being returned by the purchasers, as they got out of order very easily. After carrying them in stock for a short time I decided they were not the kind of pens that I wanted.

Q7. Did this salesman explain to you that the pens he was selling were not the genuine Waterman pens voluntarily, or did you ask him? A. I asked him, and he told me that this was the A. A. Waterman, instead of the L. E. Waterman.

Q8. Did the salesman give you any instructions as to the name or style under which the A. A. Waterman & Co. pens should be sold to the public? A. I don't think he did.

1517 Q9. Did you while you were handling these pens have many calls for Waterman pens? A. Some.

Q10. How did you sell the A. A. Waterman & Co. pens to the public?

Objected to as immaterial.

A. As a self-filler Waterman pen.

Q11. Did you have any customers who inquired whether the pen you were selling was the genuine Waterman pen? A. I did.

Q12. And what did you tell them? A. Well, I always explained it away by saying that these pens were self-fillers, and that I did not have the pen they wanted.

Q13. When a customer inquired for a Waterman pen, what
1518 kind of a Waterman pen, did you in your experience find that they were asking for?

Objected to as impossible for witness to tell what was in the mind of customer.

A. Well, that is a little hard to answer. Because most people just call for a fountain pen, and I only had these pens in stock a short time, because I felt as I was not selling the people what they wanted.

Q14. What percentage of the A. A. Waterman pen you sold, were returned to you as unsatisfactory? A. About one-third of them.

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Q15. What was the matter with them? A. The little sack seem to twist in two.

Q16. Was that the only trouble you found? A. Sometimes the little end which was used for filling would break off.

Q17. What did you do with the pens that were returned to you in an unsatisfactory condition? A. Some of them I sent in, for them to fix which they did, and some others I just left in stock, and just put them back as being no good.

Q18. Have you any of those pens now? A. I have.

Q19. Can you produce them? A. I can. (Here witness produces one pen.) I have some more, but cannot now find them.

Q20. Now, were these pens that you speak of returned to you as unsatisfactory? A. They were

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Q21. For what reason did you discontinue the sale of the A. A. Waterman & Co. pen? A. Because they did not seem to give the satisfaction that I thought they ought to, and another reason was that they put in another agency here. But when anything was wrong, they were always willing to make it right.

CROSS-EXAMINATION by A. S. Bacon:

XQ22. How many A. A. Waterman pens did you buy in all? A. I think two dozen or two and a half dozen.

XQ23. How many did you return that were injured? A. About one-third.

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XQ24. How many did you send back to New York? A. About ten or twelve in all.

XQ25. And you kept two? A. Yes. I kept three.

XQ26. Why did you not send the three back? A. No particular reason. I just neglected sending them.

XQ27. What was the retail price of these pens? A. The two dollar pens.

XQ28. How long did you sell these pens? A. About a year or a year and a half.

XQ29. How long ago was that? A. It must have been three or four years.

1522

XQ30. May it not have been much longer than that? A. I think not.

XQ31. Was it in Crestline? A. Yes, sir.

XQ32. How long have you been in Crestline? A. Eight years.

XQ33. Was it not when you first came to Crestline? A. I don't think so.

XQ34. Are you sure? A. Yes, for I was selling the Parker pen when I first came here.

XQ35. May it not have been about the first year you were here? A. No, sir.

XQ36. Are you sure? A. Yes.

1523

XQ37. What makes you so certain of the date? A. Because I was selling the Parker pen for some time after I came here.

XQ38. How long were you pushing the Parker pen? A. I should judge for about something like three or four years.

XQ39. Did you not sell other pens while you were selling the Parker? A. Not at first.

XQ40. How soon did you? A. I don't remember. Three or four years after I got the Mooney Self Filler, and then I got the Waterman Modern.

XQ41. Who was the man who sold you these goods? A. I don't remember his name.

XQ42. Do you know whether he represented the Modern Pen Co. or some jobber? A. He represented the Modern Pen

1524

Co. and so told me.

XQ43. Did he give you his card when he first came in? A. I think he did.

XQ44. And that card had on it, the Modern Pen Co., sole selling agents for the A. A. Waterman & Co.? A. I think it did.

XQ45. You had sold the L. E. Waterman goods before that? A. I did at Fostoria, Ohio.

XQ46. Then the moment he came in and showed you his card, you knew that he represented A. A. Waterman & Co. and not L. E. Waterman & Co.? A. Yes, sir.

XQ47. Then you did not have to ask him the difference between the companies? A. I think I did know the difference.

1525

XQ48. And you did not have to ask him the difference? A. No, sir.

XQ49. Do you know whether this man travelled from Chicago or New York? A. I think from New York.

XQ50. Did you correspond with New York? A. Yes, sir.

XQ51. And you always found the New York people very nice to deal with, did you not? A. Yes, sir.

XQ52. What pen did you take on in the place of the Waterman? A. I took on no new pen. I pushed the sale of the Mooney, which I had sold for four or five years.

XQ53. Do you know whether or not the A. A. Waterman pens which were returned as unsatisfactory had met with accidents? A. No, I think the fault was in not knowing how to use them right.

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XQ54. If they had known how to use them all right, would they have been all right?

Objected to as being purely speculative.

A. I could not say.

RE-DIRECT EXAMINATION by Mr. Raymond:

RDQ55. Do you remember whether or not the salesman, who sold you the A. A. Waterman & Co. pen described them to you as Waterman pens? A. No, he said that they were "Modern Pens" made by the A. A. Waterman & Co.

1527

RDQ56. Did the initials "A. A." convey any distinction to you between the Waterman pens you had dealt with in Fostoria, and the pens the salesman was selling you? A. It did.

RDQ57. When you were dealing in the L. E. Waterman pens at Fostoria did you have so large a percentage of them returned as unsatisfactory, as with the A. A. Waterman & Co. pens? A. No, sir.

RDQ58. You found the L. E. Waterman pens generally satisfactory to the customers? A. I did.

RDQ59. Were these A. A. Waterman & Co. pens which were returned to you in a condition indicating that they had been

stepped upon or that some accident had happened to them? A. No, sir.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ60. You did not know what had happened to them? A. No, sir.

RXQ61. Tell generally about the trouble you have had with self-filling pens? A. I had about one in five of the Mooney pens returned as unsatisfactory, customers not knowing just how to use them. With the A. A. Waterman pens they twist them too hard, and twist them off.

1529

CHAS. E. TRORY.

A. H. KINSEY, being first duly sworn, deposes as follows:

Direct-examination by Mr. Raymond:

Q1. What is your name, occupation and place of residence? A. A. H. Kinsey, Crestline, Ohio; druggist.

Q2. How long have you carried fountain pens, and what kinds have you carried? A. I have had Beltzer & Wilson, the Eagle, Laughlin, Rexall, and the A. A. Waterman.

1530 Q3. Will you state what conversation you had with the salesman, who sold you the A. A. Waterman pens, giving as near as possible the date of the conversation? A. I can't remember the date. I think it was a year ago last fall. I cannot remember all the conversation, but I do remember that the salesman said that A. A. Waterman, and L. E. Waterman were brothers.

Q4. What else did he say? A. He said that they had been partners, and that they had dissolved, and that they were manufacturing practically the same pen.

Q5. How long had you known the pens made by the L. E. Waterman & Co., and how had you known the pen? A. I could not say as to that. In fact the time that I bought these pens, I did not know which was the original.

Q6. Did the salesman tell you or lead you to believe that the A. A. Waterman was the originator of the Waterman pen?

Objected to as leading.

A. I don't think that he did.

Q7. What did he say? A. I have told you all that I can recall as to the conversation.

Q8. Did he give you any instructions as to the name which the pens should be sold to the public? A. No.

Q9. Did he call these pens "Waterman Pens" in selling them to you? A. I think he did.

CROSS-EXAMINATION by A. S. Bacon: 1532

XQ10. Did you know the name of the salesman? A. No, sir.

XQ11. How many did you buy? A. I think a dozen.

XQ12. Did he travel from New York or Chicago? A. I don't know that. The pens came from New York. I don't know where he travelled from.

XQ13. Did he give you his card when he first came in? A. As far as I recall he did.

XQ14. He told you that he represented A. A. Waterman & Co., and called your attention to the distinction between the A. A. Waterman, and the L. E. Waterman concern? A. Somewhere in the conversation he did.

XQ15. He told you that A. A. Waterman was not connected 1533
with L. E. Waterman, and that the two concerns were entirely separate? A. Yes, sir.

XQ16. Did he say that he represented the Modern Pen Co. sole selling agents for the A. A. Waterman & Co.? A. I think he did, that is where the pens came from, but I don't recollect the conversation.

XQ17. Did he give you a printed memorandum of sale? A. I think so.

XQ18. And on the bottom of it, was printed in large letters, "Modern Pen Co., sole selling agents for A. A. Waterman & Co.?" A. I don't recall anything about that.

1534 *A. H. Kinsey*

XQ19. But you do recollect that he gave you to understand that his goods were manufactured by the A. A. Waterman & Co., and not by the L. E. Waterman & Co.? A. Yes.

RE-DIRECT EXAMINATION by Mr. Raymond:

RDQ20. Did he explain the distinction between the concerns voluntarily, or did you ask him? A. I could not say.

RDQ21. You knew that there was an L. E. Waterman & Co.? A. I knew that there was an L. E. Waterman & Co., and also that there was an A. A. Waterman & Co., but did not know which one was advertised.

1535

Signature of witness is waived.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK,

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

1536 vs.

MODERN PEN COMPANY,
Defendant.

Testimony of witnesses taken before B. C. Miller, a Clerk of the United States Circuit Court and Standing Examiner at his office in the Post Office Building in the City of Cleveland, County of Cuyahoga, State of Ohio, under the provisions of the Equity Rules and Revised Statutes on the 7th day of April, 1911, at 10 o'clock in the forenoon, pursuant to notice hereto annexed.

Appearances:

Walter B. Raymond, of Counsel for Plaintiff.
Alexander S. Bacon, Solicitor for Defendant.

GEORGE P. KNEELAND, a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Raymond:

Q1. What is your name, residence and occupation? A. George P. Kneeland, Cleveland, Ohio, 1251 Parkwood Drive; department manager, Burrows Brothers Company.

Q2. How long have you handled fountain pens? A. For about 11 years. 1538

Q3. What makes of fountain pens have you handled during the 11 years and for how long have you handled them? A. During that time I have handled Waterman Ideal pens, the Paul E. Wirt pen, for eleven years, and during that time I have handled the Moore Non-leakable pen, Conklin, the Auto-filler, Laughlin and numerous other makes.

Q4. Now, under what name do the public call for Waterman's Ideal fountain pen? A. Invariably they ask for a Waterman pen.

Q5. How long has that been the case in your experience? A. Ever since I have handled the pen.

Q6. Does the Waterman's Ideal pen prove generally satisfactory to customers? A. They do invariably so, to the extent that they come back repeatedly when the first ones are lost, as is often the case. 1539

Q7. Now, I show you a photograph marked as "Complainant's Exhibit No. 1, April 7, 1911." Were you present at the time that photograph was taken? A. I was.

Q8. Will you state whether that photograph is a fair representation of the window which is purported to be photographed? A. It is.

Q9. What window is it? A. The west window of the Standard Drug Company in Euclid Avenue, Cleveland.

1540 *George P. Kneeland*

Mr. Raymond: I offer that photograph in evidence.

Said photograph is hereto attached and made part hereof.

Mr. Bacon: That is objected to as immaterial and in no way connected with the defendant.

CROSS-EXAMINATION by Mr. Bacon:

XQ10. Have you ever dealt in A. A. Waterman pens? A. Not in a selling capacity. We have handled them as repairs.

XQ11. You do not know how people designate them when they want to buy them? A. Invariably they ask for a Water-
1541 man pen, as we handle the Waterman pens and feel that is the pen they want. When they say "Waterman," we refer to the Waterman Ideal.

XQ12. When people want to get an A. A. Waterman pen, you do not know what they inquire for, because you never have sold them? A. Never have sold them; no, sir.

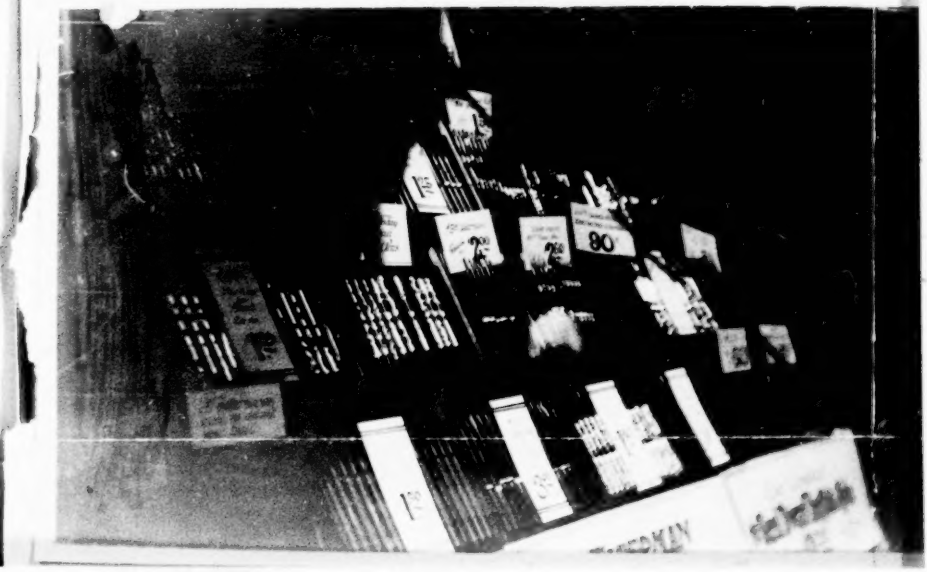
XQ13. Then you don't know how people describe the A. A. Waterman pen when they want to buy one? A. I would not know; no, sir.

RE-DIRECT EXAMINATION by Mr. Raymond:

RDQ14. Did you ever in your experience have a person ask
1542 for a Waterman pen where from their subsequent actions you learned that they intended to ask for and expected to receive an A. A. Waterman & Company pen? A. I do not recall any such instance.

Signature of the witness waived by consent of counsel present for both parties.

Plaintiff's Exhibit 1 of April 7, 1911.



1546 *Alfred Burkhardt*

ALFRED BURKHARDT, a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Raymond:

Q1. What is your name? A. Alfred Burkhardt.

Q2. Where do you reside? A. Euclid, Ohio.

Q3. Did you accompany a gentleman named Cormier, of the office of Watson & Raymond, in New York, at the time he was in Cleveland purchasing pens? A. I did; yes, sir.

Q4. Now, will you state in your own words what occurred? A. We left Burrows Brothers, I imagine, about 10 o'clock. We walked up to the Standard Drug Company, Arcade, Euclid
1547 Avenue, and looked over their window. We had known they had a large number of Waterman pens in there and we thought we would go in there and purchase one. We looked over the pens and asked—

Mr. Bacon: I object to this on the ground that the Standard Drug Company is a stranger to the defendant.

A. (Continued.) We asked the young lady if that was the Waterman Ideal pen and she said, "Yes, it was." So we asked the price. It was $3.50. So finally she turned us over to the gentlemen, seeing we were some time in buying a pen, and he remarked that was a $3.50 Ideal fountain pen, that they were selling it because they were intending to close them out and
1548 that the regular price of that pen was $8.00. So we finally bought the $3.50 pen.

Q5. Do you remember what was inscribed on the pen which was so purchased? A. As I remember, "A. A. Waterman" pen, fountain pen.

Q6. Do you know whether or not it was a Waterman Ideal fountain pen? A. I know it was not.

CROSS-EXAMINATION by Mr. Bacon:

XQ7. Have you ever dealt in pens? A. No, sir.

XQ8. Had you ever seen an A. A. Waterman pen before? A. Yes, sir.

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XQ9. Where? A. Standard Drug Company.

XQ10. Do you know the name of the young lady that you spoke to? A. No, sir.

XQ11. Do you know the name of the man you spoke to? A. No, sir.

XQ12. The Standard Drug Company is a very large concern? A. Yes, sir.

XQ13. And has a great many salesmen and saleswomen? A. Well, the Standard Drug Company has; yes, sir.

RE-DIRECT EXAMINATION by Mr. Raymond:

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RDQ14. This is one particular store you went to? A. One particular Arcade store.

RDQ15. And there were one or two people in charge of the counter? A. Two people, lady and gentleman.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ16. And how many clerks in the store all told? A. I couldn't tell you.

RXQ17. A great many? A. Quite a number.

RXQ18. You don't know how many but it was a large number? A. I don't know how many, no.

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Signature of the witness waived by consent of counsel for both parties.

1552 *George F. T. Brooks*

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK,

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

v.

MODERN PEN COMPANY,
Defendant.

1553

Testimony taken *de bene esse* for final hearing on behalf of the plaintiff, before Frank H. Mason, a Notary Public, at his office in the main Post Office Building, Boston, Massachusetts, on the 31st day of March, 1911, beginning at 10 o'clock in the forenoon, pursuant to notice hereto annexed.

Appearances:

Samuel S. Watson, Esq., Counsel for Plaintiff.
Alexander S. Bacon, Esq., Counsel for Defendant.

GEORGE F. T. BROOKS, a witness of full age, produced on
1554 behalf of the plaintiff, being duly sworn, deposes as follows:

By Mr. Watson:

Q1. Please state your name, place of residence and your occupation? A. George F. T. Brooks, Belmont, Massachusetts; stationery buyer.

Q2. With what concern are you associated? A. The Harvard Co-operative Society, Cambridge, Massachusetts.

Q3. Where is their place of business? A. Harvard Square, Cambridge, Massachusetts.

Q4. And how long have you been connected with them? A. Since 1896; 15 years.

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Q5. Does the Harvard Co-operative Association handle and sell fountain pens? A. They do.

Q6. How long have they done this? A. I couldn't tell you how much before I was there, but ever since I have been there.

Q7. And since you have been connected with that concern what kind of fountain pens have they handled and sold? A. They have sold the L. E. Waterman, the A. A. Waterman, the Moore, and what was the Colonial at one time; those are the principal ones; we have handled several smaller that I couldn't recall just now.

Q8. Ever handled the Wirt pen? A. Yes.

Q9. Ever handled the Swan pen? A. Yes, we have handled the Swan. We have handled the Parker also.

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Q10. Ever handled the Sterling? A. No.

Q11. By what name do your customers ask for a Waterman Ideal fountain pen? A. Usually a Waterman pen.

Q12. And how long has that been a fact as far is it has come to your knowledge? A. No specified time. It has always been that way as far as I know, been the custom; it has been the custom to ask for a Waterman pen.

Q13. And what is the name by which that pen is generally spoken of by the trade? A. Ideal, as far as I know; that is what I understand by a Waterman pen, is an Ideal.

Q14. And do the trade refer to this pen and speak of it as a Waterman pen or a Waterman Ideal pen? A. I have usually heard it spoken of as Waterman Ideal.

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Q15. How long has that been a fact as far as you are personally concerned? A. I can't recall any specified time, date.

Q16. Has it ever been anything different? A. Very often spoken of as Waterman pen, but personally when I think of Waterman I think of Ideal; that's the first thing that comes into my head.

Q17. Do the Waterman pens and the pens that the plaintiff manufactures prove generally satisfactory to your customers as far as has come to your personal knowledge? A. At one time we handled nothing but the A. A. Waterman pen; that's what was the main pen. We used to have a great deal

1558 *George F. T. Brooks*

of trouble with it, more so than since we handled the L. E. Waterman Ideal. We had at one time both of them in the store.

Q18. Did you have any confusion between these pens on account of the similarity in name? A. Used to have; used to have quite a little trouble with them.

Q19. Did you ever know of any customer coming into your place and asking for a Waterman pen and expecting to get an A. A. Waterman pen? A. No, not that I can answer definitely; I couldn't say that I have.

Q20. When they asked for a Waterman pen, as far as it came to your personal knowledge they always wanted a Waterman's
1559 Ideal fountain pen? A. They did.

Q21. From your experience in handling fountain pens and the different makes you have mentioned, what in your opinion is the best fountain pen on the market? A. I should stand back of the Waterman Ideal; I know that from experience and the amount of sales also.

Q22. When were you handling pens stamped A. A. Waterman & Co., what period of time? A. 1899 up to 1903.

Q23. What did you find to be the principal complaint regarding these pens? A. The A. A. Waterman?

Q24. Yes? A. The pen points were inferior.

Q25. That is what people told you the matter was? A. Yes, we had more pens come back to us for repair than any other that
1560 I have had.

Q26. Do you have any evidences come to your attention of confusion now between the Waterman's Ideal Fountain Pen and those stamped A. A. Waterman & Co.? A. No.

Q27. Nobody brings them in now? A. Nobody asks for A. A. Waterman's pen; they ask for Waterman; we hand it out to them.

Q28. But has anybody brought you an A. A. Waterman pen and asked you to exchange it? A. No, I can't say that they have, not to my personal knowledge.

Q29. Do you come in personal contact with your customers? A. I do considerable selling.

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Q30. And you have general charge of the Harvard Co-operative Association's stationery department? A. Stationery department.

31. And you have had that charge for about 15 years? A. Yes; I went there to take that position.

CROSS-EXAMINATION by Mr. Bacon:

XQ32. Was not Mr. F. H. Thomas formerly in charge of that department? A. No, sir.

XQ33. What was his position? A. He had charge of the Medical Department in Boston.

XQ34. Were not you under him? A. No, sir. 1562

XQ35. Didn't he buy the pens? A. Wait a minute. Did you say—

XQ36. Were you under him? A. He was superintendent at one time, from 1899 to 1903.

XQ37. He was superintendent? A. Superintendent of the whole Co-operative Society.

XQ38. He was the whole thing? A. He was the whole thing.

XQ39. And that is the time they sold A. A. Waterman pens? A. That was the time.

XQ40. And then after he left in 1903, you took charge of the stationery department? A. No; I had charge of it while he was there also; he was superintendent of the whole store.

XQ41. The A. A. Waterman pens were used at his direction, 1563 were they not, from 1899 to 1903? A. They were.

XQ42. You didn't have any control over it? A. No, not at that time; no, I didn't.

XQ43. When he left as superintendent and you had the say in the stationery department, you changed to the L. E. pen? A. I did.

XQ44. And you have not sold any of the A. A. pens since 1903? A. We sold what stock we had left after 1903.

XQ45. How long did it take you to sell that out? A. I can't tell.

XQ46. A short time? A. No; two or three years.

XQ47. You never have bought any pens of the Modern Pen Company at all? A. No.

XQ48. And you never have sold any pens that have been made since the Modern Pen Company was organized? A. No.

XQ49. And you don't know anything about the new pen manufactured since their organization? A. Only what I learned from their salesman; their salesman calls on me every little time.

XQ50. But you have no personal knowledge of the A. A. Waterman & Co. pens as manufactured since 1905, when the Modern Pen Company was organized? A. Not since the new company has gone into existence.

1565 XQ51. And your whole experience relates to the period from 1899 to 1903? A. As far as the two pens are concerned.

XQ52. As far as these two pens are concerned? A. That is, handling the two together, you might say.

XQ53. And you haven't handled the recent manufacture of Modern pens? A. No.

XQ54. I am not mistaken, then, in saying that you do not handle any A. A. Waterman pens at all nowadays, and haven't for some years? A. At present we don't handle any pens except L. E. Waterman pens.

XQ55. And haven't since July 1, 1905? A. It is safe to say that I haven't bought any, anyway.

XQ56. If a man was carrying an A. A. Waterman pen, he
1566 would be apt to call it a Waterman, wouldn't he? A. That is a question; I wouldn't, myself.

XQ57. And if he went into a store where they sold A. A. Waterman pens, wouldn't he call for a Waterman? A. Not if he knew the difference, I don't think he would. Anybody speaks of Waterman naturally speaks of Ideal.

XQ58. They speak of Ideal pen, don't they? A. Not always; they call for a Waterman.

XQ59. And if they want a Modern pen, they speak of that that way? A. No.

XQ60. Weren't they called Modern pens when you dealt with them years ago? A. No, I am not so sure of that, when they

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did call that Modern. I shall have to recall that statement.

XQ61. If a man went into a store where they sold A. A. Waterman pens, what would he be apt to call for? A. I should naturally suppose he would ask for A. A. Waterman.

XQ62. If he saw the "A. A. Waterman" outside on the door, would he call for a Waterman?

> Plaintiff's Counsel objects to all this line of testimony as entirely immaterial and on its face improper in form, calling for speculation of the witness as to what some man would do or might do under some hypothetical conditions that do not exist here; also objected to as not relating to the issue in this case.
>
> 1568
>
> Defendant's attorney puts on the record a statement that as far as his experience goes in this case the only evidence that seems to have been desired is absolutely immaterial, irrelevant and incompetent on the part of the plaintiff.

Deposition closed.

Signature waived.

MISS FLORENCE W. WOOD, a witness of full age, produced on behalf of the plaintiff, being duly sworn, deposes as follows:

1569

By Mr. Watson:

Q1. Will you please state your name and your place of residence, and your occupation? A. Florence W. Wood; Bedford, Massachusetts; clerk at L. E. Waterman Company's.

Q2. And you are a clerk in the store of the L. E. Waterman Company at No. 8 School Street, Boston? A. Yes.

Q3. How long have you been a clerk in that store? A. A little over a year.

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Q4. And you wait on the customers who come in to buy goods? A. Yes.

Q5. And when these customers come into the store and ask to buy a fountain pen, what do they ask for? A. Why, either ask for a fountain pen or a Waterman pen.

Q6. And has that been the fact all the time since you have been in the store? A. Yes.

Q7. Did you ever have anybody come in there and ask for a Waterman pen and give you to understand in any way that they expected to get an A. A. Waterman & Co. pen? A. No.

Q8. Have you ever sold a pen stamped "A. A. Waterman & Co., New York"? A. No.

1571 Q9. Are these ever brought into the store? A. Yes.

Q10. Please tell in your own way just how these pens, stamped A. A. Waterman & Co., come to your attention? A. A customer comes in the store and wants his pen repaired and I look at it and find that it is an A. A. Waterman, and I tell them it is not our pen and sometimes they get very angry and say they know they bought the pen at our store. I tell them that it is not our pen and then they say they bought it for a Waterman pen.

Q11. And do you have many cases of the character such as you have described? A. Yes.

Q12. How often do those cases occur where people bring in a pen stamped "A. A. Waterman & Co., New York," and tell

1572 you in one way or another that they thought it was a pen of the plaintiff's manufacture? A. Why, they vary; sometimes we have three or four a week and then again we wouldn't have any; sometimes we would have more than four.

Q13. Do these people that complain to you in this way usually leave their name with you? A. Well, not always.

Q14. Do they sometimes? A. Yes, sometimes they do.

Q15. Do you repair pens of other makes at your store other than those of the L. E. Waterman Company? A. Not as a rule; sometimes we do to accommodate our customers.

Q16. As a general rule you don't take in any other pens for repair,—only those of the plaintiff's make? A. No.

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Q17. Do you take in and exchange pens of other makes besides those of the Waterman Ideal pen? A. Sometimes we do.

Q18. Do you take in and exchange a pen of any make that is offered? A. Yes.

Q19. Do you give the same terms of exchange as you do on a Waterman Ideal Fountain Pen? A. No, we allow them 25 per cent.

Q20. Is there any discrimination in their store between pens stamped "A. A. Waterman & Co., New York," and those of Wirt or Swan or any of the other makes? A. No, just the same.

1574

CROSS-EXAMINATION by Mr. Bacon:

XQ21. You work for the plaintiff, the L. E. Waterman Company, do you not? A. Yes.

XQ22. And are a saleswoman only? A. Yes.

XQ23. You don't do any repairs? A. No.

XQ24. And have had but one year's experience in selling pens? A. Yes.

XQ25. There is a store right across the street from you that sells A. A. Waterman pens, is there not? A. Yes.

XQ26. You said the people would sometimes come in and appear to be angry and say that they bought the pen at your store. Is that right? A. Yes.

1575

XQ27. And they were just as mistaken in the store as they were in the pen, were they not? A. Yes.

XQ28. Don't people often come in and ask for Ideal pens? A. Well, they do sometimes, but as a rule they ask for a Waterman pen or a fountain pen.

XQ29. You have never handled A. A. Waterman goods at all? A. No.

XQ30. And you don't know by what name people call these pens when they own them or ask for them? A. No, I don't know.

1576 *William J. Chaplin*

WILLIAM J. CHAPLIN, a witness of full age, produced on behalf of the plaintiff, being duly sworn, deposes as follows:

By Mr. Watson:

Q1. Please state your name, place of residence and your occupation? A. William J. Chaplin; South Hanover, Massachusetts; am a salesman and manager of the New England Branch of the L. E. Waterman Company.

Q2. The plaintiff has a store in Boston? A. They have, yes, sir.

Q3. Where is it located? A. 8 School Street.

1577 Q4. You have charge of that store? A. I have.

Q5. And what are your duties outside of having charge of that store? A. Why, visit the retail trade, Boston, Providence, Philadelphia, Baltimore and Washington.

Q6. How long have you had the same territory and duties that you have now? A. Well, I have had the territory of Philadelphia, Baltimore and Washington this is the 11th year; this is the 9th year I have been manager of the New England Branch.

Q7. You sell fountain pens and other products of plaintiff's manufacture at both wholesale and retail at the Boston store? A. I do.

Q8. Do you personally come in contact with the retail cus-
1578 tomers at the Boston store? A. More or less.

Q9. Substantially every day when you are in the City? A. Yes.

Q10. And what part of the time are you in the city? A. Two-thirds of the time.

Q11. By what name do customers call for fountain pens of plaintiff's manufacture? A. At the retail store?

Q12. Yes? A. Usually for Waterman pens or fountain pen or pen.

Q13. When they mention any name in connection with the fountain pen or pen, what is the name they usually employ? A. Waterman.

1579

Q14. And how long has that been the fact? A. Always.

Q15. As far as your experience goes? A. As far as my experience goes.

Q16. What do your wholesale customers, dealers, etc., ask for? A. As a rule, Waterman pens.

Q17. How long has that been a fact? A. Ever since I have been employed with them.

Q18. As far as the matter has come to your personal attention, what is the name the trade usually employ when they refer to pens of plaintiff's make? A. Waterman.

Q19. How long has that been a fact? A. Always.

Q20. When you say "always," you mean during your entire experience? A. Exactly. 1580

Q21. Did you have any acquaintance with the trade in fountain pens prior to your employment by the plaintiff? A. I did.

Q22. What was the name then the trade used in speaking of or referring to pens of plaintiff's manufacture? A. Usually Waterman.

Q23. As far as the matter has come to your personal knowledge, have the pens of plaintiff's manufacture proved satisfactory to the trade? A. Entirely so, yes.

Q24. To your retail customers? A. Yes.

Q25. Have any evidences come to your attention of confusion between the pens of plaintiff's manufacture and those stamped "A. A. Waterman & Co., New York"? A. Yes, a great many. 1581

Q26. In what way, and relate some of the circumstances, if you can recall them? A. Usually through reports of my help, and occasionally the matter is brought to me.

Q27. And what is the nature of the complaints as you find them out? A. Well, they are usually brought in the first place because for some reason the pen is unsatisfactory. When we get talking with them they usually think that it is the one of the plaintiff's make, a Waterman pen, even going so far as to say the name is on the barrel. When we point out it is not ours,

1582 they are usually surprised and sometimes, not infrequently, they get very angry about it.

Q28. What frequently occurs as to the guarantee? A. Well, when they think it is ours, they refer to the pen as being guaranteed and think we ought to make it good.

Q29. Do they ever give you to understand that they feel you are trying to avoid making good your guarantee? A. They certainly do.

Q30. Miss Wood referred in her testimony, that you heard, to some people coming into your store and stating that they had purchased a pen stamped "A. A. Waterman & Co., New York," in your store. Can you give any explanation of how such an

1583 occurrence as that could happen? A. Yes.

Q31. Will you please do so? A. Well, I have a case in mind, a case brought to me within a few months, of a lady that had an A. A. Waterman pen; she got rather angry because she thought we were trying to avoid using her properly, and when she found it was not our make she then said that she had bought it in a store on Bromfield Street, located in about the same place on Bromfield Street that ours is on School. She said to me that she wanted a pen, a regular Waterman pen, and said so because her husband wanted a regular, genuine Waterman pen, because a friend of his got one; that is what she asked for and she got an A. A., and she went back, I believe to Ailman's over the matter.

1584 Q32. As the Court may not be familiar with Boston, will you please state in a little more detail the relative location of these two stores? A. Bromfield Street and School Street are parallel. We are 8 School, and Ailman, I think, is 10 Bromfield.

Q33. The Ailman store and the Waterman store are on the same side of their respective streets? A. They are.

Q34. And Bromfield Street runs from Washington Street to Tremont Street? A. Yes.

Q35. And School Street also runs from Washington Street to Tremont Street? A. Yes, they do.

1585

Q36. Both of these streets are one block long? A. One block long; one block apart.

Q37. And parallel? A. Parallel.

Q38. And one block apart? A. One block apart.

Q39. Does this store that you refer to on Bromfield Street, Ailman & Co., I think is the name, have signs and other advertisements of pens stamped A. A. Waterman & Co.? A. They do.

Q40. They have a large sign out bearing that name? A. Well, they have signs in their window; fair, good sized signs in their window, and usually they have one indicating that they are the agents.

1586

Q41. You don't recall whether or not they have a large sign over their door hanging out over the sidewalk, which has their name as agents for the A. A. Waterman & Co. fountain pens? A. I cannot.

Q42. Do you find any confusion among the retail dealers in fountain pens between the fountain pens that the plaintiff manufactures and those stamped "A. A. Waterman & Co., New York"? A. Yes, we find some.

Q43. Will you mention some instances, if you have any in mind? A. Why—give the name of the dealer?

Q44. Yes? A. Why, I have in mind a man named Tucker. Is it necessary to have his initials?

Q45. Where is his place of business? A. Whitman, Mass.

1587

Q46. And any other? A. I had a report of one recently; Guertin in Pawtucket, Rhode Island. There are others from time to time but I remember these two because one was reported recently and the other I handled personally, Tucker.

Q47. Do you recall any complaints in the trade respecting sale of fountain pens by the Egyptian Diamond Jewelry Company of Washington? A. I do.

Q48. Please relate the circumstances as to how this matter came to your attention? A. I visit Washington regularly and some of my dealers down there complained that Waterman pens were sold at cut prices.

1588 *William J. Chaplin*

Q49. Did they mention the place? A. They mentioned the place the Egyptian Diamond Company.

Q50. What did they say to you about that in general? A. They were complaining about it. I couldn't recall the very exact words, but they complained that this man had our pens and were selling them at cut prices.

Q51. Did you investigate it? A. Immediately investigated.

Q52. And found they weren't the plaintiff's goods? A. I did.

Q53. How did you find those goods were marked that were displayed by the Egyptian Diamond Jewelry Company? A. Just the goods? Well, most of them, in fact I think all that
1589 I saw, had "Lincoln" and then "A. A. Waterman & Co., Maker, New York." I know A. A. Waterman; that is as far as I looked.

Q54. Did you see any pens there marked "Royal Ideal"? A. I did.

Q55. Did you see a lot of these pens displayed in the window of this concern, the Egyptian Diamond Jewelry Company? A. Yes.

Q56. What were the signs displayed in connection with those goods? A. The window itself had in big letters, "Fountain Pens," and then in small ones had "A. A. Waterman," possibly "& Co.," but "A. A. Waterman," however, and on the other side they had "Royal Ideal;" so much that it confused even
1590 some of my trade. Then the windows—in the windows he had them piled up in the usual way with A. A. Waterman trays and then in these little signs he had marked exactly the same as the window was: "A. A. Waterman" and "Royal Ideal" and "Pens."

Q57. Do you know whether on these signs in the window it was A. A. Waterman or A. A. Waterman & Co.? A. I wouldn't say.

Q58. Do you remember whether sign on the window was "Royal Ideal" or "Royal Ideal Pens"? A. I should say "Royal Ideal Pens."

1591

Q59. When was this? A. I should say about a year and a half ago.

Q60. And where was this store located in Washington? A. On 9th Street Northwest, about two or three doors above F Street.

Q61. And that would make it 900 and something 9th Street, Northwest? A. That is what it would.

Q62. Did you see any advertisements of the Egyptian Diamond Jewelry Company and of the pens that you described in the newspapers? A. Yes.

Q63. About the same time that you investigated the case? A. Yes.

1592

Q64. And were these pens in the advertisements you saw advertised in connection with the name of Royal Ideal Pen and A. A. Waterman & Co.? A. They were; they carried out the general scheme of the store.

Mr. Bacon: Question and answer objected to. The advertisement is the best evidence.

Q65. Does the L. E. Waterman Company sell pens marked with the name on the barrel of "Waterman" alone? A. A great many of them, yes, sir.

Q66. A great many different styles of pens that are marked "Waterman" alone? A. Yes, sir.

Q67. How long has that been the fact? A. Ever since I have been in the business.

1593

Q68. Does the L. E. Waterman Company sell fountain pens which are marked on the barrel "Waterman's" alone, without any distinguishing initials or other words? A. They do.

Q69. How long have they been doing that? A. Ever since I have been with them.

Q70. Did you ever see any pen anywhere at any time, any fountain pens except those handled by the plaintiff, which were marked "Waterman" alone without any distinguishing initials or other distinguishing marks? A. No, I haven't.

Q71. Did you ever see any fountain pen any time, anywhere, which was imprinted "Waterman's" alone, without other dis-

1594 tinguishing marks or initials except those handled by the plaintiff company? A. No, sir.

CROSS-EXAMINATION by Mr. Bacon:

XQ72. How long have you been in the pen business? A. 13 years.

XQ73. Did you know A. A. Waterman personally? A. I did, yes, sir.

XQ74. Knew him when he was in business in Boston? A. Yes.

XQ75. What year was that? A. About 1899.

1595 XQ76. Were you in business with him then? A. Not when I met him, no, sir.

XQ77. What was he doing when you first met him? A. Well, I should say he was trying to form a pen company.

XQ78. He was manufacturing pens, wasn't he, or selling them himself? A. I don't think he was manufacturing, no, sir.

XQ79. He was selling them under his own name? A. I believe so.

XQ80. Here in Boston? A. Yes.

XQ81. When you first met him? A. Supposed to be, yes, sir.

XQ82. And did you know him when he was in the firm of
1596 A. A. Waterman & Company when Mr. Gibson was his partner? A. I did not.

Mr. Watson: Counsel for plaintiff objects to this line of questions as not proper cross-examination and not referred to by the direct-examination and gives notice that the defendant makes the witness his own as to all new matter of which he inquires about on cross-examination.

XQ83. Did you know him continuously after about 1899?

Same objection and notice that the defendant is bound by the witness' answers.

1597

A. I knew him continuously for a year and a half or so.

XQ84. Was he then selling pens marked "A. A. Waterman & Co."?

Same objection.

A. When I first knew him it was A. A. Waterman.

XQ85. He was selling pens marked "A. A. Waterman," wasn't he?

Same objection.

A. Yes.

XQ86. Then afterwards was he selling pens marked "A. A. Waterman & Co."?

1598

Same objection.

A. I think he put "A. A. Waterman & Co." afterwards. I don't know just when.

XQ87. Did you ever work for him or with him?

Same objection.

A. I worked with him; not for him.

XQ88. In what concern?

Same objection.

A. I was connected with the Colonial Pen Company.

XQ89. What were his relations with the Colonial Pen Company?

1599

Same objection.

A. I think that primarily he was an employee the same as I was.

XQ90. Did not the Colonial Pen Company manufacture pens for him marked "A. A. Waterman & Co."?

Same objection.

A. Not to my knowledge, no, sir.

XQ91. Did they manufacture pens for anybody marked "A. A. Waterman & Co."?

1600 *William J. Chaplin*

Same objection.

A. I think not.

XQ92. When Mr. Waterman was connected with the Colonial Pen Company did he not sell pens marked "A. A. Waterman & Co."?

Same objection.

A. Part of that time, I think he did, yes, sir.

XQ93. Who made those pens, do you know?

Same objection.

1601 A. I think part of the time he bought the parts and put them together.

XQ94. And you have known of the A. A. Waterman pen from that day to this, haven't you, as continuously on the market?

Same objection.

A. Yes, I think so.

XQ95. And it has been advertised at times profusely, has it not?

Same objection.

A. I wouldn't say so, no, sir.

XQ96. It has been advertised all this time?

1602 Same objection.

A. No, I wouldn't say so.

XQ97. It has been advertised a great deal of this time?

Same objection.

A. Some of the time.

XQ98. It was sold openly and above board in the market as the A. A. Waterman & Co. pen, was it not?

Same objection.

A. I will not say; I don't know; I don't know that.

XQ99. You knew of its being sold?

1603

Same objection.

Q. Yes, some dealers who sold it.

XQ100. For how many years have you known the A. A. Waterman pen being sold on the Boston market?

Same objection.

A. I have known of the A. A. Waterman pen being on the market for 11 years, I think; all the time I have been connected; I guess that will come within the limit all right.

XQ101. And it has been continuously on the market during those 11 years, hasn't it?

Same objection.

1604

A. So far as I know.

XQ102. You sell nothing but L. E. Waterman goods?

Same objection.

A. That is all.

XQ103. In your Boston store at 8 School Street you have nothing but L. E. Waterman fountain pens?

Same objection.

A. No, sir, that is not true.

XQ104. Do you sell other makes?

Same objection.

1605

A. No, sir.

XQ105. Then you have certain pens manufactured by L. E. Waterman & Co. that do not bear their name of Waterman?

Same objection.

A. No, sir.

XQ106. What do you mean?

Same objection.

A. I mean if you made that word "products" I would have said so, but you said only fountain pens.

1606

XQ107. I was referring to pens.

Same objection.

A. We don't sell any other pens, only one. We sell their products.

XQ108. What are their products?

Same objection.

A. Ink and accessories of different kinds.

XQ109. How many fountain pens do you carry in stock in the Boston store?

1607

Same objection and also entirely immaterial to any issue in this case.

A. I don't want to answer that question.

XQ110. I insist upon its being answered?

Same objection.

A. Then I will tell you that I can't tell you off hand.

XQ111. About a thousand?

Same objection.

A. We carry that many filled with ink.

XQ112. About how many thousands—I don't expect an accurate answer?

1608

Same objection.

A. We have a thousand pens filled with ink for our retail trade—

XQ113. In the Boston store?

Same objection.

A. —to deliver at once on small orders.

XQ114. That is in 8 School Street?

Same objection.

A. Then we have the wholesale stock besides.

1609

XQ115. In 8 School Street, how many pens have you marked "Waterman" or "Waterman's" alone, without any other distinguishing mark?

Same objection.

A. I couldn't tell you.

XQ116. About how many?

Same objection.

A. I don't know. They come constantly.

XQ117. Have you got a hundred?

Same objection.

1610

A. I should say more.

XQ118. You are not willing to swear that you have more than 100?

Same objection.

A. I should just as soon as swear to anything if I knew it. Our stock is constantly moving; would be impossible to do so.

XQ119. Did Mr. Saadi, in Washington, the Egyptian Diamond Company, in Washington, sell L. E. Waterman pens, too?

Same objection.

A. Never to my knowledge. Certainly he never bought them. 1611

XQ120. You mean he never bought them of you?

Same objection.

A. Exactly.

XQ121. He could buy them of jobbers?

Same objection.

A. He can't, no, sir; it is an impossibility.

XQ122. Why so?

Same objection.

A. Because they are not sold to jobbers.

XQ123. Don't you sell any goods through jobbers?

Same objection.

A. Never. We sell direct to the retail dealer.

XQ124. Nevertheless, Mr. Saadi could have bought L. E. pens from other people, couldn't he?

Same objection.

A. Not without paying the retail price.

XQ125. What is the name of the firm that sells your goods in Portland?

1613

Same objection.

A. There are several. I have sold two firms within a few days.

XQ126. What were the names?

Same objection.

A. One a drygoods firm and one a big jewelry house down there.

XQ127. What was the name of that?

Same objection.

A. McKenny.

1614 XQ128. We examined yesterday a salesman from a stationery store in Portland. I can't think of the name of his firm. Don't you know that Mr. Stevens, the salesman for that firm, sells L. E. Waterman pens on the road?

Same objection.

A. No, sir; I do not.

XQ129. Doesn't he sell pens at wholesale? A. I don't think he does. I have never known of a case in my career with the Waterman people.

XQ130. Do you know the Tower Manufacturing & Novelty Company of New York?

1615

Same objection.

A. Know of them, yes.

XQ131. Don't you know that they job L. E. pens?

Same objection.

A. No, sir.

XQ132. You never knew that?

Same objection.

A. No, sir.

XQ133. How often were you at the Egyptian Diamond Jewelry store in Washington?

1616

Same objection.

A. I think twice.

XQ134. How long an interval between?

Same objection.

A. Two months.

XQ135. Isn't it a fact that Mr. Saadi, the owner of that store, only sold the Royal Ideal pen for a very short time?

Same objection.

A. I don't know that. I know that for two or three months —I go there every two months; the first time it is brought to my attention; then I report it; and the next time some action is taken. 1617

XQ136. You should say he was selling it for two or three months?

Same objection.

A. I believe six or eight months altogether.

XQ137. You don't know when he began?

Same objection.

A. No; I took no notes on that.

XQ138. You don't know how many he sold?

Same objection.

1618

A. No, sir.

XQ139. You say that a man named Tucker from Whitman, Massachusetts, a dealer, had a personal conversation with you about being confused as to the different makes of pen. Kindly give that conversation?

Same objection.

A. I was going through Whitman one day waiting for a car and dropped in to see Mr. Tucker and saw he had some A. A. pens in the case. I brought up the matter of why he didn't handle some Waterman pens; he said, "I've got them;" "No, you haven't;" "Sure I have," he said, "in the case."
1619 Knowing they were A. A., I said, "No, those aren't Waterman pens. I represent the Waterman Company." He went and looked at them and found they were marked A. A. Waterman. I said, "That is a different pen altogether." He was very much surprised.

XQ140. Did he say of whom he purchased his goods?

Same objection.

A. Percival.

XQ141. Who is Percival?

Same objection.

A. A jobber.

1620 XQ142. Where?

Same objection.

A. Boston; it is in the Jeweler's Building here. I don't know the number; he is one of the large jobbers here; Jeweler's Building, Washington and Bromfield Streets.

XQ143. Did any individual ever come to you in the Boston store and say when they had an A. A. Waterman pen they thought it was an L. E. Waterman?

Same objection.

A. A great many.

1621

XQ144. Can you give the names of any?

Same objection.

A. I think I can. One of them was a lady, in the case I referred to here.

XQ145. What is her name?

Same objection.

A. Her name is Ronimus.

XQ146. You don't know her first name?

Same objection.

A. It seems to me it was R. S. 1622

XQ147. And you don't know her address?

Same objection.

A. Allston, which is a suburb of Boston.

XQ148. And you don't know her street address?

Same objection.

A. 16 Princeton Avenue, Allston.

XQ149. Give us some other name?

Same objection.

A. The other one that I have in mind is a Mrs. Kelly; she lives in 189 West Springfield Street, Boston Massachusetts. 1623

XQ150. Are those the only two names you can give us?

Same objection.

A. The only two I can remember off hand, yes, sir.

XQ151. You never have dealt in A. A. Waterman pens at all?

Same objection.

A. Oh, yes, some.

XQ152. When?

Same objection.

A. When I was with the Colonial Pen Company.

XQ153. That was many years ago?

Same objection.

A. Yes, sir.

XQ154. You never have dealt in A. A. Waterman pens since the organization of the Modern Pen Company?

Same objection.

A. No, I think not. The Modern was the name of the line that they made at that time.

XQ155. The Modern Pen Company was organized about July
1625 1, 1905?

Same objection.

A. Yes, sir.

XQ156. You don't personally repair pens yourself?

Same objection.

A. At the present time?

XQ157. At any time, now, at any time?

Same objection.

A. Not unless something comes in I can do right off for a customer.

1626 XQ158. And you have had no experience in the manufacture of pens? A. Some.

XQ159. When? A. When I was with the Colonial Pen Company.

XQ160. When did you leave there? A. Ten years ago last October.

XQ161. How long were you with them? A. I have got mixed when I started; in 1899, I think it was.

XQ162. About how long were you with them? A. About two years, I should say.

XQ163. What did you do when you were with them? A. I was manager of the Colonial Pen Company.

XQ164. And did they manufacture pens? A. No.

XQ165. What did they do? A. They bought their pens from A. A. Waterman.

XQ166. And he manufactured them? A. Supposed to, yes, sir.

XQ167. Then when you were manager for the Colonial Pen Company you didn't have anything to do with the manufacture of the pens? A. Not with the organization, no, sir; but as manager of the Colonial Pen Company I had more or less to do with both ends of it.

XQ168. Then A. A. Waterman & Company were manufacturing pens and selling them to the Colonial Pen Company, is that it? A. That was the idea, yes, sir. 1628

XQ169. You do not take in all sorts of pens to repair, do you? A. Not as a rule, no, sir.

XQ170. You do not take in A. A. Waterman pens to repair? A. Not as a rule. There are exceptions in both cases.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ171. Do you know Edward M. Stevens of Portland, personally? A. No.

RDQ172. Do you visit Portland? A. No.

RDQ173. Is it part of your territory? A. No.

RDQ174. Do you know the concern with which he is connected? A. Know of them. 1629

RDQ175. The conversation you had with Mr. Tucker of Whitman, Massachusetts— A. Yes.

RDQ176. —Did Mr. Tucker say anything to you as to what make of pen he thought he had? A. He certainly did.

RDQ177. What did he say he thought he had? A. Waterman pen.

RDQ178. What did he mean by that? A. He meant the Waterman Ideal.

RDQ179. Did he give you distinctly to understand that? A. He did.

RDQ180. What did he say to make you think so? A. He said he was going to get rid of that stock as soon as he could and buy ours.

RDQ181. Did he express any familiarity with Waterman's Ideal fountain pen? A. Yes.

RDQ182. And what did he say that convinced you that he had been deceived in purchasing these pens he had? A. First he told me who he bought them of, Percival of Boston; was quite surprised to find they weren't the genuine Waterman pen; was further surprised they would let him go on and buy those pens under that impression.

1631 RDQ183. Did he say anything about buying them as pens of the plaintiff's make?

Objected to as irrelevant, immaterial and incompetent, as hearsay.

A. He said when he bought them he thought he was getting a genuine Waterman pen and that he would buy them later.

RDQ184. When you said he would buy them later what do you refer to? A. Waterman Ideal.

RDQ185. When you speak of Waterman's genuine pen what do you mean? A. Waterman's Ideal.

RDQ186. How do you happen to remember these two or three cases you call to mind, Mrs. Ronimus and Mrs. Kelley? A. As a rule a case of that kind in the store I don't handle
1632 personally; they are reported to me, however, and when a customer gets a little beyond their help they refer them to me and tell them I will be in; and Mrs. Ronimus came to me so strenuous about it I remember it very well from that fact.

RDQ187. Did you handle the other cases that you have referred to? A. Tucker of Whitman I handled; that is why I remember it. Guertin is of recent date. It came to me in the form of a report from one of our men.

RDQ188. You personally received the complaints regarding the Egyptian Diamond Jewelry Company? A. I did from customers in Washington.

1633

RDQ189. I understand on your cross-examination you said that when you first met A. A. Waterman he was making pens under his own name—that is, A. A. Waterman. Is that correct? A. Yes, sir.

RDQ190. Do you recall how those pens were marked? A. When I first met him? "A. A. Waterman," I think.

RDQ191. Anything else on them? "A. A. Waterman, Maker, Boston," on them? A. Yes, some of them. I think he gradually changed as he went along. I think at first I knew him only as A. A. Waterman and his business as A. A. Waterman. He had only an office at that time.

RDQ192. Did he have a factory at that time? A. No.

1634

RDQ193. Was he manufacturing pens? A. No. I know he bought them in New York, some of them; some of his gold pens he bought from P. D. Collins.

RDQ194. Where are they? A. Gold pen manufacturers of New York. I think he bought product from Frazer & Geyer of New York.

RDQ195. And how long did you know him before the Colonial Pen Company was organized? A. I couldn't tell you that exactly, but shortly after that, formed the company; they finally named it the Colonial Pen Company.

RDQ196. Two or three months? A. Might have been two or three weeks and might have been two or three months. From the time I first met him and until we got the Colonial Pen Company it was certainly three months.

1635

RDQ197. And during that time do you know of any pens that he manufactured under the name of A. A. Waterman & Co.? A. Yes.

RDQ198. During the time you met him before the Colonial Pen Company was organized he was manufacturing pens marked A. A. Waterman & Co.? A. No, not in that time. I thought you asked—

RDQ199. And when you organized and began business as the Colonial Pen Company did you have any factory? A. No.

RDQ200. And how were the pens marked when you started business as the Colonial Pen Company? A. They were marked

"A. A. Waterman"—this is my recollection—"Maker, Boston, Mass." Then we marked some of them "Dewey's Perfect Pen made by A. A. Waterman."

RDQ201. Did you make that to start with, when you started the Colonial Pen Company? A. As soon as we could get it out.

RDQ202. How long was that? A. I can't tell you.

RDQ203. Did you make a pen which you called, or did you sell a pen which you called the Uncle Sam? A. Yes.

RDQ204. And did you advertise after you got started as the Colonial Pen Company that you were selling A. A. Waterman pens? A. We did; yes, sir.

1637 RDQ205. And not A. A. Waterman & Co. pens? A. Yes, we did.

RDQ206. Did you find this marking caused any confusion in the trade? A. Yes, there was confusion.

RDQ207. And what was there about it that caused confusion? A. The marking.

RDQ208. What part of the marking? A. The name "Waterman."

RDQ209. Was the name "Waterman" at that time well identified with the plaintiff's fountain pens? A. Yes.

RDQ210. Did the trade at that time know the plaintiff's make of pens as Waterman pens? A. Yes.

RDQ211. And were they called for at that time by the trade by the name of Waterman pens? A. Yes.

1638 RDQ212. Did you come in contact with the trade at that time? A. Some.

RDQ213. And had you known anything about Waterman pens of plaintiff's make before you formed the Colonial Pen Company? A. Yes.

RDQ214. How long? A. Oh, six or seven years. I will correct that. Five years, I will say, before.

RDQ215. Did you know Edward L. Gibson, who was formerly at one time a partner of Arthur A. Waterman?

Objected to as that was answered on cross-examination.

A. No, I never met the gentleman.

RDQ216. Do you know whether he is alive or not now? A. Yes. I know he is dead.

RDQ217. Do you know when he died? A. Why, yes. He died in August, 1899.

RDQ218. When did Arthur A. Waterman sever his connection with the Colonial Pen Company? A. In January, 1901, I should say.

RDQ219. I show you a copy of a circular signed "A. A. Waterman" and dated Boston, March 1, 1899, and ask you if you recall seeing the original of that circular? A. I do.

RDQ220. Have you got a copy of it? A. I can't say for sure now. 1640

RDQ221. You haven't any copy here? A. No.

RDQ222. Do you remember anything about whether this circular was sent out to the trade on or about its date or not? A. Just as soon as we could get it out, yes.

RDQ223. Was it sent out while you knew A. A. Waterman? A. It was; yes, sir.

RDQ224. And where was his office at that time? A. In Bromfield Street, 56.

RDQ225. Boston? A. Yes, Boston.

RDQ226. Were you in that same office at the time the circular was sent out? A. Yes, sir.

The circular identified by the witness is offered in evidence and marked Plaintiff's Exhibit 100. 1641

Objected to as irrelevant, immaterial and incompetent, as the circular is the best evidence.

RDQ227. I show you copy of the circular dated Boston, April 20, 1899, and signed "A. A. Waterman." Do you remember of seeing the original of those circulars? A. I do; yes, sir.

RDQ228. And do you know whether or not those circulars were sent out to the trade on or about the date they bear? A. Yes.

RDQ229. And was A. A. Waterman in the same office with you at the time those were sent out? A. He was.

The circular identified by the witness is offered in evidence and the same is marked Plaintiff's Exhibit 101.
Same objection.

RDQ230. Do you know anything about the circular, a copy of which I now show you, and which is dated Boston, February 1, 1899, and signed "Rhodes Lockwood"? A. Yes, I have seen the matter.

RDQ231. Was that circular distributed among the trade, do you know? A. Yes.

1643 RDQ232. At about the time of its date? A. Yes.

Circular identified by the witness is offered in evidence and marked Plaintiff's Exhibit 102.
Same objection.

RDQ233. Looking at the circulars you have identified, can you now tell us when, or about what time, you first met A. A. Waterman? A. Along—well, I should say along in May of 1899.

RDQ234. How long after you met A. A. Waterman did you form the Colonial Pen Company? A. Well, a couple of months, say.

RDQ235. Soon after? A. Soon after.

1644 RDQ236. And at the time you met A. A. Waterman was he making any kind of pens as far as you know except those which were marked "A. A. Waterman, Maker, Boston"? A. No.

RDQ237. Did he at that time, do you know, make a pen he called the Uncle Sam? A. Yes, a little later; about that time, I might answer that question, somewhere.

RDQ238. Was A. A. Waterman at the time you met him, so far as you know, making any fountain pens marked "A. A. Waterman & Co."? A. No, sir.

RDQ239. How long was it after the time you first met him before you knew he was making or selling fountain pens marked "A. A. Waterman & Co." A. I can't answer that.

RDQ240. Did he make any up to the time that you formed the Colonial Pen Company as far as you know? A. I should say not.

RDQ241. Can you give us any approximate time when he first made pens marked "A. A. Waterman & Co." after you knew him? A. No, I wouldn't want to say when he did that.

RDQ242. After you formed the Colonial Pen Company you became the selling agents for all the goods that he was making? A. Yes, sir.

RDQ243. And you advertised them as A. A. Waterman pens and not as A. A. Waterman & Co. pens; is that so? A. I think at first we did as A. A. Waterman pens.

RDQ244. And afterwards as A. A. Waterman & Co. pens? 1646
A. That is my recollection; yes, sir.

RDQ245. When you first began to sell them, they were marked "A. A. Waterman, Maker, Boston"? A. That is my recollection; yes, sir.

RDQ246. Do you know when the Colonial Pen Company began to sell fountain pens stamped "A. A. Waterman & Co."? A. No, sir.

RDQ247. When A. A. Waterman left the Colonial Pen Company, what were his relations to that company? A. Well, he was practically an employee.

RDQ248. What were his duties? A. To look after the factory and sell goods on the road.

RDQ249. Was he an officer of the Colonial Pen Company? 1647
A. I think he may have been; not positive.

RDQ250. When did he leave the Colonial Pen Company? A. About the first of the year 1901.

RDQ251. And when he left the Colonial Pen Company, what became of the factory that he was running? A. The Colonial Pen Company moved it to Boston and run it.

RDQ252. Did the Colonial Pen Company own that factory? A. Yes, sir.

RDQ253. Did they furnish the money to equip that factory? A. Yes, sir.

RDQ254. And when A. A. Waterman left the Colonial Pen Company, did he take any of the goods or assets of the Colonial Pen Company with him? A. Not to my knowledge; no, sir.

RDQ255. What became of the business after he left? A. It was run by the Colonial Pen Company.

RDQ256. Just the same as before? A. Just the same as before.

RDQ257. How long did it continue? A. Well, I should say as a matter of fact it run a good while.

RDQ258. You mean by a good while, several months or several years, or what? A. Well, it run until late in the fall of the same year.

1649 RDQ259. 1901? A. Yes, sir; and then they had a failure.

RDQ260. And what became of its property then? A. It was afterwards run by one or two of the old members of the company and finally sold out to one Lancaster of Baltimore.

RDQ261. The old concern as a going concern and all its assets sold to Lancaster? A. So far as I know.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ262. When did the Colonial Pen Company fail? A. I think along in the latter months of 1901.

RXQ263. Who were the officers of the company? A. I think Mr. Dewey was president.

1650 RXQ264. What other officers? A. Well, I think that I was only manager, and I don't know who the other officers were. We were the three active ones.

RXQ265. Who was the third? A. Mr. Waterman, A. A. Waterman.

RXQ266. Do you know whether he held some office? A. I wouldn't say.

RXQ267. The Colonial Pen Company was the selling agent of A. A. Waterman & Company? A. Yes, sir.

RXQ268. And they did the manufacturing? A. Whom do you mean by "they"?

RXQ269. A. A. Waterman & Company. A. Yes.

1651

RXQ270. And their factory was at Somerville, Mass.? A. Yes.

Mr. Watson: Same objections to these questions.

RXQ271. In 1899 did L. E. Waterman Company have a factory anywhere? A. 1899?

RXQ272. Yes, or 1900. A. I don't know only by reputation.

RXQ273. Wasn't their reputation at that time that they didn't have any factory at all? A. My experience was this in that matter, that they did not have a factory.

RXQ274. And for many years after that? A. I wouldn't say that; no, sir.

1652

RXQ275. When did the L. E. Waterman Company first have any factory of its own? A. Well, I have always understood that they had a factory at Seymour, Connecticut.

RXQ276. That is where the penholders were made? A. Yes, sir.

RXQ277. Is that the only factory? A. No, they have a factory in Canada.

RXQ278. That is only within the last year or two? A. Within the last year or so.

RXQ279. What other factory have they? A. In New York.

RXQ280. How long have they had one there? A. I think for five or six years.

RXQ281. Before that they didn't have any factory at all? A. Except the one at Seymour.

1653

RXQ282. And up to five or six years ago the L. E. Waterman Company were mere assemblers of the parts, were they not? A. I don't know; I wouldn't want to say that.

RXQ283. You knew they bought their pen points of one party and got their penholders from another?

Same objection.

A. I think that might be said at any time. You asked me when they had a factory. I don't know when they first had their factory in New York.

RXQ284. It is true now that they get their holders at Seymour, Connecticut, and buy pen points and manufacture them—A. So far as I know their Seymour, Connecticut, factory is their factory; I don't know; at one time I tried to get some holders and couldn't.

RXQ285. When you first went with them, did they have a factory at Seymour—when you first went there? A. I don't know that; I think they did.

RXQ286. When you were selling L. E. Waterman pens through the Colonial Pen Company didn't people call them Waterman pens at that time? A. Yes, sir.

1655 RXQ287. Did Mrs. Ronimus or Mrs. Kelley tell you who sold them their pens? A. Mrs. Ronimus did.

RXQ288. Mrs. Kelley did not? A. I am not sure she did; no, sir.

RXQ289. Whom did Mrs. Ronimus say? A. She claimed she bought her pen at Ailman's.

RXQ290. Did she say what they told her when she bought the pen? A. She didn't say what they told her; she said what she asked for.

RXQ291. She didn't say what they told her? A. I don't think she did.

RXQ292. You induced Mr. Tucker to change his line of goods, didn't you? A. He did change them; not at that time.

1656 RXQ293. Owing to your persuasive eloquence? A. No, I don't think so.

RXQ294. You will not admit it A. No. Mr. Tucker was very indignant.

RXQ295. Did you see his stock? A. I did; yes, sir.

RXQ296. It was in a large case? A. No, sir; it was in a tray.

RXQ297. And on the tray was "A. A. Waterman & Co."? A. I think it was.

RXQ298. And Mr. Tucker can read and write? A. Yes, sir.

RXQ299. How long has he been in the business? A. I don't know; he is a jeweler.

RXQ300. Did he say that he didn't know the difference between L. E. Waterman and A. A. Waterman pens? A. He

didn't know there was but one company; he thought he had the genuine.

RXQ301. He knew he had A. A. Waterman & Company's? A. Before I left him he did; yes, sir.

RXQ302. Didn't he from the fact that that sign was on the case? A. No, sir; apparently from what he said to me he didn't.

RXQ303. Apparently he read the sign on the tray and didn't know he had A. A. Waterman & Company's goods? A. He thought they were Waterman.

RXQ304. Are you prepared to say they were not Waterman? A. From my understanding I am prepared to say so.

RXQ305. That wasn't your understanding 10 years ago— 1658
11 years ago? A. Yes, sir.

RE-RE-DIRECT EXAMINATION by Mr. Watson:

RDQ306. You haven't anything to do with the manufacturing department of the L. E. Waterman Company have you? A. Not a bit.

RDQ307. And you don't know whether they had a factory in New York five years ago or ten years ago, do you? A. I certainly don't.

RDQ308. You don't know whether they had a factory in 1899 or not? A. I do not; no, sir.

RDQ309. Did A. A. Waterman & Company ever have any 1659
factory in Somerville that you know of; did they ever have any factory in Somerville at any time? A. It was run under that name; yes, sir.

RDQ310. When? A. Along between—oh, 1900.

RDQ311. That factory was, as a matter of fact, owned by the Colonial Pen Company, wasn't it? A. Yes.

RDQ312. And you used that name to get the benefit of the Waterman name; wasn't that the fact? A. I think that is the truth.

RDQ313. And A. A. Waterman didn't own a dollar in that factory? A. No, sir.

RDQ314. And had absolutely no interest in that factory at all? A. No financial interest.

RDQ315. The only interest he had in it was his salary as an employee of the Colonial Pen Company? A. And we got the benefit of his experience over at the factory.

RDQ316. And the only interest he had in it was his salary as an employee of the Colonial Pen Company? A. That is all.

RDQ317. And he ran it for their interest and benefit? A. He did; yes, sir.

RDQ318. And the plaintiff's pens were called Waterman pens at that time, were they not? A. They were; yes, sir.

RDQ319. And when people call a pen stamped A. A. Waterman & Co. the Waterman pen, how do they happen to do it? A. They get confused on the names; don't know L. E. from A. A. In the case of Mr. Tucker, he thought he had a genuine Waterman pen and was surprised when he found he hadn't.

1661

RDQ320. He meant by genuine Waterman the one— A. The one that was advertised extensively was the words he used; the one he thought he had.

RDQ321. When you explained the difference to him, did he say anything about the pen he thought he had? A. Yes.

RDQ322. Which one did he say he thought he had? A. He thought he had Waterman's Ideal fountain pen.

RDQ323. When people called pens stamped A. A. Waterman & Co., which were sold by the Colonial Pen Company, Waterman pens, did they call them so because they were mistaken, too? A. Yes, sir.

1662

RE-RE-CROSS EXAMINATION by Mr. Bacon:

RXQ324. You never heard of an L. E. Waterman factory up to about five or six years ago, did you? A. Yes, sir.

RXQ325. Where? A. From A. A. Waterman.

RXQ326. Did you hear of an L. E. Waterman Company factory up to about five or six years ago? A. Yes.

RXQ327. Where? A. From A. A. Waterman.

RXQ328. I do not understand. Did you ever hear of the L. E. Waterman Company having a factory up to five or six years ago? A. Yes, sir.

RXQ329. From whom? A. A. A. Waterman.

RXQ330. He told you that they had a factory? A. Yes, sir.

RXQ331. Did anybody connected with the L. E. Waterman Company ever tell you they had a factory up to five or six years ago? A. I think they did.

RXQ332. Where was that? A. I think it was in New York.

RXQ333. Who told you? A. I wouldn't want to say that; I don't know; in other words, I would say if I knew.

RXQ334. You were in New York very frequently? A. Not much. 1664

RXQ335. Were you ever in their factory? A. Yes, have been in their factory.

RXQ336. When? A. Couldn't tell you just when, but for a number of years.

RXQ337. Within five or six years? A. Yes.

RXQ338. You never were in one before? A. Not to my knowledge.

RXQ339. When you were with the Colonial Pen Company you always called the A. A. Waterman pen the Waterman pen? A. No, sir.

RXQ340. Didn't the people who came in call it the Waterman pen? A. Yes, sir; asked for a Waterman.

RXQ341. And the dealers you dealt with eleven or twelve years ago called it the Waterman? A. The dealers not so much so. 1665

RXQ342. They did some? A. Possibly some; but the retailers are what we call the dealers; but the people at large referred to it as the Waterman pen.

RXQ343. When they meant the A. A. Waterman? A. No; usually they wanted the Waterman Ideal, and it takes an explanation to sell them an A. A.

RXQ344. And if a man was carrying an A. A. pen way back twelve years ago, he would call it a Waterman pen? A. I don't know that he would call it that, Waterman; no, sir. I would have no way to answer a question of that kind.

1666 *Howard L. Wheeler*

HOWARD L. WHEELER, a witness of full age, produced on behalf of the plaintiff, being duly sworn, deposes as follows:

By Mr. Watson:

Q1. Please state your name, place of residence and your occupation. A. Howard L. Wheeler; 32 Sackett Street, Providence, Rhode Island; stationer.

Q2. And where is your place of business? A. 98 Westminster Street, Providence, Rhode Island.

Q3. And how long have you been in the stationery business? A. Twenty-seven years.

Q4. How long have you sold fountain pens A. More than
1667 twenty years.

Q5. What kind of fountain pens have you sold during that period? A. I have sold Waterman Ideal, Moore's Non-Leakable, Boston Safety, Swan, the Conklin, and the Wirt and the A. A. Waterman.

Q6. When did you sell A. A. Waterman pens? A. I should say 17 or 18 years ago; that is just an estimate.

Q7. How long since you stopped selling pens stamped "A. A. Waterman & Co."? A. Probably ten years.

Q8. How long did you sell them? A. I couldn't say just how long; six or seven years, I should estimate.

Q9. Of all the pens that you have handled, what pens have you found the best? A. I have sold more of the Waterman
1668 Ideal pen; consider it the best.

Q10. By what name do your customers ask for the Waterman Ideal fountain pens? A. They ask for Waterman pen, Waterman Ideal pen.

Q11. What is the name they usually use when they come into the store and ask for one of these pens? A. Waterman pen.

Q12. How long has that been so? A. As long as we have sold them.

Q13. What is the name by which the trade usually refer to pens of the plaintiff's make? A. Waterman pen.

Q14. And by what name do they usually refer to the plaintiff—when they refer to the plaintiff, what name do they use? A. Waterman.

Q15. Have you had any evidence brought to your attention of confusion in the trade or in the minds of the public between the pens of plaintiff's make and those stamped "A. A. Waterman & Co., New York"? A. Yes.

Q16. In what way does that confusion come to your attention? A. Well, people have brought in pens for exchange, thinking that they had the Waterman pen; that is, the one generally called the Waterman pen and advertised extensively, and felt bad when they found we wouldn't exchange it because we didn't carry at the time the A. A. Waterman pen.

Q17. Did you ever have any customer come into your store and ask for a Waterman pen and give you to understand in any way that they expected to obtain an A. A. Waterman & Co. 1670
pen? A. No, I think not.

CROSS-EXAMINATION by Mr. Bacon:

XQ18. You haven't sold any A. A. Waterman pens in the last ten years? A. I wouldn't say for a certainty.

XQ19. Certainly not since July 1, 1905, when the Modern Pen Company was organized? A. I should say not.

XQ20. And the present firm of A. A. Waterman & Company? A. I should say not.

XQ21. Then you know nothing of the pens that are manufactured by the present firm of A. A. Waterman & Company? A. Practically nothing. 1671

XQ22. You don't take them in exchange? A. No.

XQ23. You don't take them to repair? A. Take them to repair.

XQ24. Do you get very many to repair? A. No.

XQ25. Very few? A. Very few.

XQ26. When you were selling both lines ten years ago, did you call both the L. E. and A. A. Waterman pens, Waterman pens? A. We called the A. A. usually the A. A. Waterman.

XQ27. You sometimes called it the Waterman? A. I think not.

XQ28. How did the people who carried the A. A. Waterman pens speak of it? A. Spoke of it as the A. A.

XQ29. Wouldn't they call it the Waterman? A. They might.

XQ30. If a man had an A. A. Waterman pen or an L. E. Waterman pen, he would call it a Waterman, wouldn't he? A. I think he would.

XQ31. Can you give the name of any person who has come to your store with an A. A. pen thinking they had an L. E. pen? A. No, sir.

XQ32. How long since any such incident has occurred? A. Shortly before Christmas, this last Christmas, I was called by
1673 one of the sales people that there was a man had an A. A. Waterman pen, brought it in for repair, and brought it in for exchange; they told him they carried only Waterman Ideal and they couldn't exchange it and he gave them to understand that he thought he was getting and bought a Waterman pen, the one that was advertised.

XQ33. Did he say where he bought it? A. In a drug store.

XQ34. Where? A. In Providence.

XQ35. Didn't tell you what one? A. No.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ36. When people call a pen marked "A. A. Waterman
1674 & Co." a Waterman pen in your experience, isn't it because they think they have a Waterman Ideal pen? A. Yes.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ37. How do you know that? A. I don't know it.

Deposition closed.

(Signature waived.)

1675

HARPER W. POULSON, of full age, a witness produced on behalf of the plaintiff, being duly sworn, deposes as follows:

By Mr. Watson:

Q1. State your full name, place of residence and your occupation. A. Harper W. Poulson; residence, 44 Steadman Street, Brookline; stationer.

Q2. How long have you been in the stationery business? A. I should think about twenty-five or twenty-six years.

Q3. How long have you handled fountain pens? A. I should think almost 25 years.

Q4. What kind of fountain pens have you sold? A. Well, the Wirt, I believe, was the original that I remember, and then 1676
the Waterman and then Parker and then back to the Waterman.

Q5. How long have you handled the Waterman Ideal fountain pen since you put it in the last time? A. I should think five or six years.

Q6. How long have you handled the Waterman Ideal fountain pen altogether? A. Well, I should say about 15 years ago, perhaps, we handled the Waterman pen originally.

Q7. How long did you handle it then? A. Oh, I should say two or three years.

Q8. Have you ever handled or sold the pen stamped "A. A. Waterman & Co."? A. Yes, sir.

Q9. When did you handle those? A. When A. A. Waterman
first left the L. E. Waterman Company and started his pen, we 1677
put his pen in.

Q10. How long did you sell that pen? A. For a few years; I don't remember just how long.

Q11. How long since you have handled any pens stamped "A. A. Waterman & Co."? A. Haven't handled any for a long time, I should say ten years or more, except perhaps a few that were left over, but we haven't carried any in stock regularly for about twelve years, I should think.

Q12. Have you had these A. A. Waterman & Co. pens shown to you by traveling salesmen? A. Not now.

Q13. How long since you have had any shown you by traveling salesmen? A. I should think eight or ten years ago.

Q14. They don't call on you now? A. No, sir.

Q15. Of all pens that you have handled, what pen do you in your opinion consider the best? A. The Waterman.

Q16. When you refer to the Waterman, what pen do you mean? A. The L. E. pen.

Q17. The Waterman Ideal fountain pen? A. Yes.

Q18. Has this pen proved satisfactory to your customers as far as the matter has come to your personal attention? A. Very.

Q19. By what name do your customers ask for pens of plaintiff's manufacture? A. Waterman pen.

1679 Q20. How long has that been the fact? A. Well, as far back as I can remember.

Q21. What is the name by which the trade generally speak of or refer to pens of plaintiff's manufacture? A. The trade?

Q22. Yes. A. Well, the Waterman pen or the Waterman Ideal fountain pen and the L. E. Waterman pen.

Q23. Is the pen of plaintiff's manufacture well known among the trade as far as you know? A. More so than any other, I should say.

Q24. As far as you have observed, they are more generally sold than any other pen on the market? A. Yes, sir.

Q25. Have at any time any evidences of confusion come to you between pens of plaintiff's manufacture and those stamped
1680 "A. A. Waterman & Co., New York"? A. Not so much now; originally a great deal; I mean when the A. A. Waterman started originally.

Q26. What was the reason that you discontinued the sale of the A. A. Waterman pens?

Mr. Bacon: Objected to as immaterial and not relating to any period covered by the defendant's life.

Mr. Watson: In view of defendant's counsel's objection the question is withdrawn.

Q27. Do you have any instances of confusion between plaintiff's fountain pens and those marked "A. A. Waterman & Co." in the last year or two? A. Yes, some.

Q28. How do those instances come to your attention? A. Well, I should say the most recent one was where a party came in with an L. E. barrel with an A. A. Waterman pen in it; said that the pen had been put in by somebody when they needed a pen somewhere and they came back and objected to the pen, so we took it out and sent it over and had an L. E. Waterman pen put in it.

Q29. Have any cases of confusion come to your attention where people have brought in an L. E. Waterman pen stamped "A. A. Waterman & Co."? A. Not recently. Rarely ever hear of A. A. Waterman now.

CROSS-EXAMINATION: 1682

XQ30. Where is your place of business? A. 26 Tremont Street.

XQ31. Boston? A. Boston.

XQ32. Then you haven't dealt with A. A. Waterman goods since July 1, 1905, about which date the present firm of A. A. Waterman & Co. was organized? A. No, I should say not.

XQ33. Very rarely see one, you say? A. Very rarely see one.

XQ34. Don't you know there are a great many A. A. Waterman pens sold in Boston? A. I do not.

XQ35. You know that there are a great many stores that carry them? A. I don't. 1683

XQ36. You never have heard of that? A. I say I don't know of a great many stores that carry it. I don't know of any stores.

XQ37. Allman & Company? A. I don't know it—I believe I do know that because I believe we had occasion to send down there with this pen I speak of; I had to get the information where to send it because I didn't know before that.

XQ38. Don't you know Smith & McCance carry it? A. No, sir.

XQ39. Don't you know they are sold here in a dozen different places? A. No, sir.

XQ40. You don't know much about your neighbors? A. Don't know much about that pen. I know it isn't sold by the prominent stationers.

XQ41. When you sold the A. A. Waterman pen 10 or 12 years ago didn't you call it the Waterman? A. No, sir.

XQ42. Didn't people who came in and bought it call it the Waterman? A. They didn't come in for that pen. They came in for *the* Waterman pen.

XQ43. Were you selling the L. E. Waterman pens— A. They put in the other pen when Mr. A. A. Waterman come in more as a matter of personal friendship.

1685 XQ44. Were you selling the L. E. Waterman pen at the same time A. Yes; we changed.

XQ45. Which did you sell the most of? A. Most of the L. E. Waterman.

XQ46. About how many years did you sell the A. A. Waterman pen? A. Carried them along for a few years; I should say probably four or five years.

XQ47. Are you a member of the firm? A. No.

XQ48. Were you then? A. No.

XQ49. You are a mere salesman? A. Well, I am there on a guaranteed salary and a commission account for my department.

XQ50. You do not do the buying? A. All of it in my department.

1686 XQ51. What does your department consist of? A. Stationery. The business is booksellers and stationers and engravers, and I have the stationery department.

XQ52. Why did you drop the L. E. Waterman line some years ago? A. I dropped everything with the name of Waterman because the thing had got so mixed up I got sick of it and put in another pen.

XQ53. When was that? A. That I couldn't tell you just when. When we discontinued the A. A. Waterman we discontinued both of them and went back to the Wirt pen; cleaned out the Waterman pen entirely, and I only put the Waterman pen back because the customers demanded it.

XQ54. And you carry other lines, too, don't you, now? A. No; our business is somewhat peculiar in this way, that we only handle one thing and that we recommend. We handle only Crane's paper and don't handle anything else.

XQ55. Did you make the change on account of threats of litigation? A. No.

XQ56. You say it was so mixed up. How did that trouble you? A. Well, because in the first place A. A. Waterman himself would come in in my absence and try and instruct my girls to show the A. A. pen when Waterman's pen was called for.

XQ57. How do you know; you weren't there? A. I was told so. And then he was rather an aggressive fellow, and then there was a good deal of confusion as to what pen the customer really did want and I thought to settle it we would throw them both out. 1688

XQ58. Then the customers didn't really know whether it was an A. A. Waterman or an L. E. Waterman pen they wanted? A. They knew a Waterman pen.

XQ59. They called an L. E. just as they called an A. A., and that was a Waterman pen? A. They didn't want an A. A. Waterman because at that time it wasn't a good pen; it wasn't satisfactory; since then they have improved; that was years ago, but when we first had it it was not satisfactory.

XQ60. You don't know who made the L. E. Waterman pens, do you, at that time? A. No.

XQ61. Never heard they had a factory anywhere? A. No. 1689

RE-DIRECT EXAMINATION:

RDQ62. What is the name of the concern with which you are? A. W. B. Clarke Company.

RDQ63. And that company has a big place of business, large store? A. Yes.

RDQ64. One of the largest here in Boston in its line? A. I should say one of the very largest; yes, sir.

RDQ65. Located on one of the principal streets of Boston? A. Tremont, 26 and 28 Tremont and opens onto Court square also.

RDQ66. That is one of the principal streets in Boston? A. I should say it was.

RDQ67. And in the main business section of Boston? A. Yes.

Deposition closed.

(Signature waived.)

Recess.

KEVIN W. BARRY, of full age, a witness produced on be-
1691 half of the plaintiff, being sworn, deposes as follows:

By Mr. Watson:

Q1. Please state your name, place of residence, and your occupation? A. My name is Kevin Walter Barry; at the Hermitage, 7 Willow Street, Boston, Mass.

Q2. And your business? A. My business is second-hand book seller.

Q3. And with what concern are you connected? A. The DeWolfe & Fiske Company.

Q4. Where is their place of business? A. 20 Franklin Street, Boston, Mass.

Q5. Have you at any time handled and sold fountain pens?
1692 A. Yes.

Q6. When? A. For the last three years at Rochester, New York.

Q7. With what concern were you connected when you sold fountain pens? A. Duffy-McInerney Company.

Q8. And where was their place of business? A. On Main Street, Rochester.

Q9. New York? A. Yes.

Q10. What kind of fountain pens did you handle? A. The L. E. Waterman, exclusively.

Q11. By what name are these pens usually called for by your customers? A. Well, they simply say they wish to select a pen.

They don't call them by any particular name, but there was possibly one reason for that. I had the name so well advertised that there was no occasion for them to ask for the name, because they saw it before they bought the goods; in fact before the goods were taken out of the case.

Q12. By what name are these pens known in the trade, so far as it has come to your attention? A. As the "Ideal;" they are always sold as the "Ideal," because other pens are sold on the market and they don't specify that they are Ideal pens.

Q13. Have you ever sold any other pens besides Waterman Ideal fountain pens? A. No. I have been canvassed to do so.

1694

Q14. Did the Waterman Ideal fountain pens that you sold prove satisfactory to your customers as far as the matter came to your attention? A. In every way.

Q15. While you were handling fountain pens in Rochester, did any evidences of confusion come to your attention between Waterman's Ideal fountain pens and those stamped A. A. Waterman & Co., New York? A. Yes; there was quite a little friction on account of the price, people saying they could buy Waterman fountain pens cheaper elsewhere.

Q16. And what were the pens referred to by the customers? A. The pens referred to were sold by another house, Scranton, Wetmore & Company, they being under the impression that they were Waterman fountain pens. They were manufactured by A. A. Waterman.

1695

Q17. Did you have any of those pens stamped A. A. Waterman & Co. brought into your store by people who told you they had bought them for Waterman's Ideal fountain pens? A. I had those pens brought into my store with the request that they be returned, and I explained that they were not L. E. Waterman fountain pens, and the people were very much astonished, as they thought there was but one Waterman, and they had bought the pens.

Q18. Did they give you to understand that they thought they had purchased the pen of the L. E. Waterman Company man-

ufacture? A. Yes; in this way; that they thought they had purchased *the* Waterman pen.

Q19. And *the* Waterman pen meant what? A. The big advertiser, L. E. Waterman.

Q20. And that was well known by the trade? A. So well known that a man would not think of asking whether it was L. E. or anybody else.

Q21. And all the time that you have been familiar with fountain pens, has that been a fact? A. Positive fact.

Q22. Had you any acquaintance with fountain pens prior to your connection with the concern you have mentioned in Rochester? A. No active experience. I have know about fountain pens
1697 all my life, but as far as selling them and attending to the repairing of them and such matters, why, no.

Q23. Did any of these customers that brought in pens stamped A. A. Waterman & Co., when you told them they were not the genuine Waterman Ideal fountain pen, become indignant? A. Well, not indignant, but very much disgusted, because they were under the impression that what they bought was bought with the provision that it could be repaired at any place in the country, which is so of the L. E. Waterman fountain pen.

Q24. These people gave you to understand that they only knew one Waterman, and that was the L. E. Waterman Company? A. No, they only knew one Waterman. They presumed that the fountain pen sold by L. E. Waterman was the only
1698 fountain pen in existence, and they so bought it.

Q25. You mean the only Waterman pen in existence? A. Yes. They presumed that the L. E. Waterman was the only pen.

Q26. The only Waterman pen in existence you mean, of course? A. Yes; well, we don't count any other pens in the market; when we talk about fountain pens we presume it is a Waterman.

Mr. Watson: That is all.

The Witness: Now, pardon me—

1699

CROSS-EXAMINATION by Mr. Bacon:

XQ27. Why do you say there is no other pen on the market? Don't you know that there are dozens of pens on the market? A. Not of the same grade as the L. E. Waterman fountain pen.

XQ28. How do you know that? A. You are not an expert in the manufacture or repairing of pens? A. No; I am not an expert in the manufacture of them.

XQ29. Or the repairing of them? A. No.

XQ30. Never did any repairing? A. No.

XQ31. And you never dealt in any other pen? A. No; except to examine them.

1700

XQ32. And you can't say that the L. E. Waterman pen is better than any other, can you? A. Yes, sir.

XQ33. You wouldn't put your judgment against that of a man who had experience in the manufacture of pens? A. No, I wouldn't put it against an expert, but I would use my own common sense and be convinced of the fact that the pens were not equal, when one was sold for 75 cents at trade, and the other was sold at $1.50.

XQ34. That is your only reason? A. That is my main reason.

XQ35. If an A. A. Waterman pen sells at six dollars and an L. E. Waterman pen sells at six dollars, you would presume they were about equal in value? A. No, on account of the patents that exist on the L. E. Waterman pen, which don't exist on the A. A. Waterman pen.

1701

XQ36. Are you aware that the principal patents on the L. E. Waterman pen ran out years ago? A. The fundamental patent ran out, but there are a great many patents still in existence that the others cannot get control of.

XQ37. And what are those patents? A. Well, I can't enter into details about them.

XQ38. You don't know anything about them, do you? A. Not much.

XQ39. Don't you know that they have got no patent existing, except on the feed? A. No; I understood there were others.

XQ40. And don't you know that their feed is extremely conceded to be about the poorest on the market? A. No, it is not.

XQ41. That the reed feed, so-called, is the very best, and not used by the L. E. Waterman Company? A. No.

XQ42. Did you know that the L. E. Waterman Company didn't manufacture their pens at all? A. The L. E. Waterman Company didn't manufacture pens?

XQ43. Yes; did you ever hear that? A. I have heard that statement made, but I never credited it.

1703 XQ44. Just assembled the parts? A. No. I heard that contradicted flatly.

XQ45. By whom? A. Inside the Waterman house.

XQ46. When? A. Oh, I guess—well, within those three years.

XQ47. The three years is the last three years? A. Yes.

XQ48. You gave up that business about two months ago? A. No; I gave it up about a year ago, exactly.

XQ49. And will you give me the name of anybody who came into your store? A. No; I was buyer, I wasn't a salesman.

XQ50. This is only what you have heard somebody else tell you? A. A case in which I have been brought down to appease a customer and smooth matters, and explain difficulties.

1704 XQ51. How many such cases are there that came within your personal observation? A. Within my personal observation about one a week. I figured we lost the sale of about 50 pens a year, and we refused to repair at least as many more.

XQ52. Can you give the name of any such person? A. I can't.

XQ53. You refused to repair any makes except your own? A. Yes, sir; we certainly did.

XQ54. And you refused to exchange any pens except your own? A. Yes, sir.

XQ55. Wasn't the cause of the anger from the fact that you wouldn't repair the pen that was brought to you? A. No; it

was because we couldn't properly explain to the customer that there was a difference between L. E. Waterman and A. A. Waterman, without entering into a slanderous story one way or the other.

XQ56. You knew of A. A. Waterman, didn't you, as a rival concern? A. I knew A. A. Waterman was once employed by L. E. Waterman.

XQ57. He started in for himself? A. Yes; and failed.

XQ58. Whoever told you that he failed? A. I have heard that from various persons. I can't tell offhand who told me.

XQ59. When did he fail and where did he fail? A. He failed in New York and went to Chicago.

XQ60. When? A. I couldn't tell you the year or anything of 1706
that kind.

XQ61. Whoever told you that? A. That I can't tell you. I am simply now telling you frankly what I heard.

XQ62. What some L. E. Waterman salesman told you? A. No. The only salesman that came to me from L. E. Waterman was L. E. himself.

XQ63. Did he tell you that? A. No, he didn't. No, I didn't hear it from L. E. Waterman at all, I know that.

XQ64. You never made any repairs yourself? A. No.

XQ65. You wouldn't know how to? A. No, sir.

XQ66. And you don't know anything about the relative merits of pens from your own experience? A. No.

XQ67. If a man had an A. A. Waterman pen in his pocket and 1707
came into your place, wouldn't he call it a Waterman pen? A. He might call it a Waterman pen, but we would know by the make of the pen, just the general formation and everything else, that it was not an L. E. Waterman pen.

Mr. Bacon: That is all.

The Witness: Now, what I was going to say was practically covered in what this gentleman asked me.

Deposition closed.

Signature waived.

FLORENCE W. WOOD, recalled.

By Mr. Watson:

Q31. Since you gave your deposition this morning did Col. Bacon call on you at the store of the Waterman Company? A. Yes.

Q32. And ask for a fountain pen with the name "Waterman" on it? A. Yes.

Q33. And have you looked in the stock of the store at 8 School Street since the Colonel's visit and found any pens of the plaintiff's manufacture, such as he inquired about this morning, in your store? A. Yes; I have them right here. (Witness produces box of pens.)

1709

Q34. Did the pens you produce come out of the stock? A. Yes.

Q35. And are these pens and similar ones pens that have been in the stock of the L. E. Waterman Company since you have been in the store? A. Yes.

Q36. Marked the same way as these are? A. Yes.

Q37. And did these come out of the regular stock? A. Yes.

Q38. And all the time you have been there have pens similar to the ones you have produced here been in the stock of the L. E. Waterman Company at 8 School Street? A. Yes.

The nine pens produced by the witness are offered in evidence and marked "Plaintiff's Exhibit 103."

1710

Q39. I notice some of these pens have little tags attached to them bearing prices and numbers. Are the prices mentioned on these tags the retail selling price of the pens? A. Yes

Q40. Why didn't you show these to Col. Bacon when he asked for them at lunch time? A. When he came in I don't know just what I was doing, but I looked up, and I was rather confused, and that is the reason I didn't.

Mr. Watson: That is all.

CROSS-EXAMINATION by Mr. Bacon:

XQ41. When Mr. Geyer and I called on you about an hour ago, after you had testified this morning, we asked you if you had any pens in stock that were marked "Waterman" or "Waterman's," without any other initials on them, did we not? A. Yes.

XQ42. And you said you didn't have any? A. Yes.

XQ43. You said that every pen you had in stock was marked "Ideal," didn't you? A. Yes.

XQ44. You said you didn't have any pens at all that were not marked "Ideal"? A. Well, that was because I was confused.

1712

XQ45. Was there any reason why you should be confused? A. Well, I don't remember what I was doing at the time, but I looked up and saw you both in there, and I was just confused, that was all.

XQ46. We asked you that question perhaps half a dozen times, didn't we, if you were sure that you didn't have any in stock anywhere? A. I don't think you asked me that many times.

XQ47. When did you ever see these particular exhibits before? A. Why, since I have been there in the store.

XQ48. These exhibits are all metal holders, aren't they?

Mr. Watson: Objected to, as the exhibits speak for themselves.

1713

A. They are.

XQ49. And there is no name of any kind marked on the holder itself, isn't that right?

Mr. Watson: Same objection, and as not stating the fact, and the exhibits speak for themselves.

XQ50. Can you find the name "Waterman" on the holder on any of these pens in this Exhibit 103? A. You can, down there at the end (indicating on pen).

XQ51. Whereabouts? A. Right there.

XQ52. That is on the little bit of a shank at the end, isn't it? A. Yes.

XQ53. What does that read there? A. "Waterman."

XQ54. What else? A. "Pat'd. Feb. 12 & Nov. 4, 1884," and "Sterling."

XQ55. I show you this one in gold with a little bit of a projection at the end in rubber. Can you read with your naked eye what is on that? A. That is "Waterman."

XQ56. You can see it without glasses? A. Yes.

XQ57. Without a magnifying glass? A. I can.

XQ58. How many more have you got in your store like this? A. Why, I don't know just how many.

1715 XQ59. Have you ever seen any others besides these nine? A. Why, yes; but these were just what I happened to pick out.

XQ60. Who asked you to pick them out? A. Why, when Mr. Chaplin came back, I told him the statement I had made, and then I went and got him a pen. I told him I was confused.

XQ61. Didn't he tell you where to find them? A. No; I knew.

XQ62. What part of the store did you find them in? A. In the cases.

XQ63. Whereabouts in the store, in the front part? A. Yes; and there were some in the cabinet.

XQ64. Did you ever have anybody before inquire for a Water-
1716 man pen marked "Waterman" only? A. They ask for Waterman pens, that is all.

XQ65. And you always give them the Ideal? A. Yes.

Mr. Bacon: That is all.

Deposition closed.

Signature waived.

WILLIAM J. CHAPLIN, recalled.

By Mr. Watson:

Q344. Where did Plaintiff's Exhibit No. 103 come from, if you know? A. Pardon me. I didn't get the whole of that.

Q345. Where did these pens come from marked Plaintiff's Exhibit 103? A. Came out of our retail stock.

Q346. And how long had those pens been in stock ? A. Couldn't tell that, but some of them must have been there a long time.

Q347. Have you any other pens in stock similar to these like Plaintiff's Exhibit 103? A. Yes.

1718

Q348. And how long have you had pens marked the same as those pens in stock? A. All the time.

Q349. A great many of the higher priced expensive pens, mounted in gold and silver, are marked the same as the pens are marked which compose Plaintiff's Exhibit 103; is that so? A. Yes, sir.

Q350. Those pens which compose Plaintiff's Exhibit 103 are regular stock? A. Regular stock.

Q351. Of the L. E. Waterman Company? A. Regular stock.

Q352. How long have you been selling pens of that same kind and with the same mounting? A. Ever since I have been with them.

Q353. And no new designs there at all? A. No.

1719

Q354. Regular stock? A. Regular stock, yes, sir. There is the same thing (indicating two different pens); that is what we call "Barleycorn," and this is plain.

CROSS-EXAMINATION by Mr. Bacon:

XQ355. None of these are marked on the body of the pen, are they? A. Yes; this is the body of the pen really; the body is the rubber.

XQ356. That little shank on the extreme end is what you call the body? A. No. This is the holder, we refer to this part as

the holder. Now, this one happens to be covered with gold, but this isn't a shank on the end, this is a part of the whole thing.

XQ357. It is in very small letters on the end, isn't it? A. Well, it is in regular sized letters that we put on all of them.

XQ358. Have you any pens in your stock with plain holders of rubber, marked either "Waterman" or "Waterman's" alone? A. I think we have had some, but I don't know whether we have got them now or not.

XQ359. Did you look and try to find any? A. Picked these right out of the case.

XQ360. Well, did you try to find any with plain holders? A. No, sir.

1721 XQ361. How long since you have seen a pen with a rubber holder, not covered with gold or silver, that was marked "Waterman" or "Waterman's" alone? A. I have seen them recently.

XQ362. How recently? A. Well, I should say within a month or two.

XQ363. Are you willing to swear that there is one such pen in your store today? A. Well, I wouldn't now, no, sir; not until I looked, surely.

XQ364. You didn't look for any of those this noon, did you? A. No, sir.

XQ365. Didn't you know that it would be very much more desirable to produce a pen here with a plain holder marked "Waterman's," than one with a holder that is all covered up with

1722 gold or silver? A. I don't know why it would; no, sir, I did not.

XQ366. Didn't Mr. Watson tell you to scour through your store and find something marked in that way? A. He certainly did not, sir.

XQ367. What did he tell you? A. He didn't tell me anything. I came back and Miss Wood told me the story about those.

XQ368. And then what did you do? A. I asked her why she told that; didn't she know we had some? And she said yes, she was confused, she looked up from her work and you and Mr. Geyer were there, and she said, "I guess I showed my confusion in my face."

1723

XQ369. No, she didn't show any confusion? A. This is what she said to me; and she said, "I told them no." And I said, "You get some pens together right off and take them down to Mr. Watson right away."

XQ370. She walked from the front of the store to the back of the store in order to find a pen, and finally she did find one and it was marked "Ideal." A. Those pens were taken right out of our showcase, on exhibition. Others were in our retail stock, what we call our retail safe.

XQ371. Then you had them in the safe? A. Some of these were taken right out of the case. What I refer to as the safe is where we take these out of the case at night and lock them up.

1724

XQ372. But you didn't find any pens so marked that had a plain holder? A. No, sir, I haven't. Didn't look for one.

XQ373. And you don't think you have any? A. I wouldn't say.

XQ374. Well, it is unusual to see such a pen, isn't it? A. A plain one marked—

XQ375. A plain rubber holder marked simply "Waterman" or "Waterman's"? A. Well, I have seen some of them lately.

XQ376. But it is very unusual, isn't it? A. It isn't as usual as it is some of the others, probably.

Mr. Bacon: That is all.

1725

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ377. The black holders are for the most part marked "Waterman's Ideal fountain pen"? A. Yes, sir.

RDQ378. And the silver and gold mounted pens are marked the same as these composing Plaintiff's Exhibit No. 103? A. Yes, sir.

RDQ379. And that has always been the fact since you have been connected with the business? A. Yes, sir; these things come that way. I don't know the reason, just why they do.

Mr. Watson: Taking these pens, I find that one I pass to defendant's counsel is marked "Waterman" alone.

Mr. Bacon: "Waterman" where?

Mr. Watson: On the back end of the holder.

Mr. Bacon: And defendant's counsel states that the marking is so small that with his glasses he cannot read it.

Mr. Watson: I pass another pen of another style, in gold mounting, that is also marked in the same place with the word "Waterman."

Mr. Bacon: Defendant's counsel makes the same remark about the size of the letters and his glasses.

1727 Mr. Watson: I hand another of the pens composing Plaintiff's Exhibit 103, which is marked in the same place with the name "Waterman" alone.

Mr. Bacon: Defendant's counsel makes the same remark, and states that in each of these instances the word "Waterman" or "Waterman's," if that is what it is, is on the extreme end of a little shank and not on the body of the pen.

Mr. Watson: Plaintiff's counsel passes three more pens composing Plaintiff's Exhibit 103 to defendant's counsel and calls attention to the fact that these are marked in the same place and in the same way with the word "Waterman" alone.

1728 Mr. Bacon: The same observation, on the extreme end of a little shank and very small letters, and not on the body of the pen.

Mr. Watson: Plaintiff's counsel examines each one of the nine pens composing Plaintiff's Exhibit 103 and finds that each one of them bears the name "Waterman" alone upon the barrel.

By Mr. Bacon:

RDQ380. Defendant's counsel asks the witness if he found any more pens so marked? A. Yes, sir.

1729

RDQ381. How many did you find? A. Well, I went as high as a dozen, but I didn't happen to have a box, and I brought the nine just to fit the box.

RDQ382. And that is all you found? A. That is all I found this time, yes, sir.

By Mr. Watson:

RDQ383. I show you a fountain pen and ask you if you recognize that as one of the regular stock of the plaintiff company? A. Yes, sir.

RDQ384. Is that a style of pen that has been regularly sold by the plaintiff company? A. Yes, sir.

1730

RDQ385. For how long? A. As long as I have been with them.

The pen identified by the witness is offered in evidence and marked "Plaintiff's Exhibit 104."

Mr. Watson: I desire to have it noted on the record that this pen is marked "Waterman's fountain pen."

Mr. Bacon: Defendant's counsel makes the same remark, that is marked on the extreme end or shank in such small letters that he cannot read it.

Deposition closed.

Signature waived.

1731

It is stipulated by and between counsel that the exhibits offered in evidence by the plaintiff shall be retained by the plaintiff until final hearing.

1732 **Plaintiff's Exhibit 100.**

TO THE TRADE

On Feb. 1 the partnership previously existing between ARTHUR A. WATERMAN and EDWARD L. GIBSON, doing business under the name, A. A. WATERMAN & Co., was dissolved by mutual consent. On the same date my relations with Mr. RHODES LOCKWOOD were terminated, causing a ma-
1733 terial reduction of working capital.

In consequence of these changes, I deem it advisable hereafter to conduct the business in my own name; and, for a short time, on a strictly cash basis, giving to customers, able and willing to purchase for cash, exceptional terms.

The regular line of my pens will be stamped "*A. A. Waterman, Maker, Boston,*" and their well-known high standard *will be maintained.*

1734 A. A. WATERMAN

36 Bromfield St.

BOSTON, March 1, 1899

Plaintiff's Exhibit 101. 1735

NOTICE TO THE TRADE

REGARDING

A. A. WATERMAN'S FOUNTAIN PENS

On Feb. 1, 1899, the partnership previously existing between E. L. GIBSON and myself, doing business as A. A. WATERMAN & Co., was dissolved by mutual consent

1736

Mr. GIBSON took a position with the Sterling Fountain Pen Co., then starting in business, having acquired certain rights from the business of A. A. Waterman & Co.; while I continued as sole maker of fountain pens bearing my name and guarantee

The regular line of my pens will be stamped "A. A. Waterman, Maker, Boston," and their well-known high standard *will be maintained*

To secure at once the best facilities for the wide distribution of my pens, called for by the Trade, I have 1737 sold my entire product to the COLONIAL PEN COMPANY, of Boston, feeling assured that they will serve the Trade most acceptably

Hereatter all orders sent me for my pens will be referred to the COLONIAL PEN COMPANY as Sole Selling Agents

A. A. WATERMAN

36 Bromfield St.
BOSTON, April 20, 1899

1738 **Plaintiff's Exhibit 102.**

CIRCULAR

FOUNTAIN PENS.

To the Trade:

Boston, Feb. 1, 1899.

The business connection existing between A. A. Waterman and the undersigned has been this day discontinued.

I am the sole owner of the Trade Mark Standard, Reliable & Sterling for fountain pens, and as such have made over to the Sterling Fountain Pen Co. the exclusive right to manufacture
1739 the same.

The Davidson Rubber Co. will continue as heretofore to make the Hard Rubber parts, and thus enable them to maintain the same degree of excellence that these Pens have always had in the past.

All settlements of accounts with A. A. Waterman & Co. existing previous to Feb. 1, 1899, and orders for above goods should be mailed to the Sterling Fountain Pen Co., 19 Milk St., Boston, Mass., who are authorized to attend to the same.

Respectfully yours,

RHODES LOCKWOOD.

1740

J. Edward Nunn 1741

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant. 1742

Met pursuant to agreement at the office of Watson & Raymond, 10 Wall Street, New York, April 6, 1911, at 12 o'clock noon.

Appearances:

Samuel S. Watson, for Complainant.
Morton Stein, for Defendant.

J. EDWARD NUNN, a witness produced on behalf of the plaintiff, being duly sworn, deposes as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, residence and occupation? A. J. Edward Nunn; my business address is Baltimore, Maryland; I live at Severn Anne Arundle, County of Maryland, about 15 miles out from Baltimore; occupation, stationer. 1743

Q2. How long have you been in the stationery business? A. 31 years.

Q3. With what concern are you now connected? A. Meyer & Thalheimer, 301 West Baltimore Street, Baltimore, Maryland.

Q4. And their business is stationers, printers, blank book makers, school desks and books, office furniture? A. Yes, sir.

Q5. With what department are you connected? A. Well, in a general way over the whole thing, especially with the school and furniture end of it.

Q6. General manager of the whole business? A. Yes, sir, general manager of the whole business.

Q7. And how long have you been with Meyer & Thalheimer? A. For the past year.

Q8. And your duties all the time have been the same as they are now? A. Yes, sir.

Q9. Prior to that time with what concern were you connected? A. Nunn & Company.

1745 Q10. And you were a partner in that business? A. Yes, sir.

Q11. And how long were you in business as Nunn & Co.? A. Seven years.

Q12. Was that business conducted in Baltimore? A Yes, sir.

Q13. Prior to that time with what concern were you connected? A. Cushing & Bailey, stationers, at Baltimore.

Q14. How long were you with them? A. I was with them from 1880 until 1903, 23 years.

Q15. What was their business? A. Book sellers and stationers.

Q16. In Baltimore? A. Yes, sir.

Q17. How long have you handled and dealt in fountain pens in connection with these concerns with which you have been
1746 associated? A. Well, they have sold them the whole time I have been there; they always handled them.

Mr. Stein: Since 1880?

The Witness: Yes, sir. My recollection is that during the early period most of them were stylographic pens.

Q18. Have you handled and sold during any of this period pens manufactured by the L. E. Waterman Company or Lewis E. Waterman? A. Yes, sir.

Q19. By what name have these pens been usually known in the market? A. The Waterman pen.

Q20. And how long have you handled Waterman pens? A. It would be pretty hard for me to answer that as to the exact

year; I know we had them at Cushing & Bailey's for a number of years before I left there, but I could not give you the exact date, but it is certainly over 15 years.

Q21. And you have handled them and sold them ever since that time? A. Yes, sir.

Q22. And during all that time what has been the name by which these pens have been commonly referred to and called for by your customers? A. Well, as a rule the customers come in and ask for a Waterman pen or a fountain pen.

Q23. And has that also been the name by which the trade generally had known this pen?

Mr. Stein: Objected to as incompetent, immaterial, irrelevant and no proper foundation laid. 1748

A. Yes, sir.

Q24. Have you heard these pens spoken of and discussed by other dealers in fountain pens since you have been handling them? A. Yes, sir, the members of the trade in Baltimore, the various stationers there, I have often talked with them.

Q25. By what name do they refer to the pen manufactured by the L. E. Waterman Company? A. They are generally spoken of as Waterman pens. I may say as a rule from my experience if the other pen is in mind it is always called special attention to as a A. A. Waterman Company pen.

Q26. Have you ever handled the pen marked A. A. Waterman & Co., New York? A. No, sir, I have not. 1749

Q27. Have you ever seen these pens? A. The A. A. Waterman?

Q28. Yes? A. Oh, yes, sir, I have seen them.

Q29. How have you seen them? A. Well, their agents have shown them to me, their traveling men have called on me and I have seen them in other stores.

Q30. Did you ever have any customer come into your store and ask for a Waterman pen or Waterman fountain pen and give you to understand in any way that they expected to purchase or receive a fountain pen stamped A. A. Waterman &

1750 *J. Edward Nunn*

Co.? A. No, sir, not to my recollection, I do not recall any instance.

Q31. Is the Waterman's Ideal Fountain Pen or the Waterman Pen as you have called them, manufactured by the L. E. Waterman Company, well known in the market or otherwise? A. Very well known I should say.

Q32. And what is their reputation among the trade for quality?

Mr. Stein: Objected to as incompetent, irrelevant and immaterial and not at issue.

A. As being one of the best.

1751 Q33. Do you know whether the fountain pens which you have referred to as Waterman pens manufactured by the L. E. Waterman Company of New York, are recognized as the standard pen on the market or not? A. Well, I know from my experience with the trade in Baltimore it is always considered one of the best pens that there is made; we consider it the standard, yes, sir.

Q34. And how long has that been a fact so far as it has come to your knowledge? A. Well, for quite a number of years, for quite a good while; I could safely say ever since I have been in business for the last ten years.

Q35. What kind of fountain pens have you handled and sold since you have been selling fountain pens? A. The Wirt pen,
1752 the Parker pen, and the Sterling pen, and also Waterman's Ideal Fountain Pen.

Q36. Have you been generally familiar with the fountain pens which are offered to buyers by traveling salesmen during the last 10 or 15 years? A. Yes, sir.

Q37. Do you buy the pens for the concern you are now with, are you the buyer? A. Not in that special department, no, sir.

Q38. But you have general superintendence of that department? A. They were bought largely at my suggestion.

Q39. And what makes of fountain pen does the concern you are now with sell? A. The Sterling, which is made up for them with their imprint on, and the Waterman Ideal.

1755

Q40. The pen with their imprint on is not sold under the name Sterling? A. No, sir.

Q41. When you were in business for yourself, what fountain pen did you carry yourself? A. The Sterling and the Waterman at first; I afterwards dropped the Sterling and carried the Waterman exclusively.

CROSS-EXAMINATION by Mr. Stein:

XQ42. You testified before that substantially since 1880 you sold pens manufactured by L. E. Waterman & Company or Lewis E. Waterman, is that correct? A. Well, no, not that I sold them since 1880; I said I did not know just exactly what 1754
date we commenced to sell the Waterman pen; I said we sold fountain pens in a general way of different makes.

XQ43. For 10 or 15 years you sold pens stated by you to have been manufactured by L. E. Waterman & Company or Lewis E. Waterman? A. Yes, sir.

XQ44. Do you know of your own knowledge whether those pens have been manufactured by L. E. Waterman & Company or Lewis E. Waterman or merely assembled? A. Why, I could not say anything about that.

XQ45. You have no personal knowledge on that subject? A. I have no personal knowledge of that, no, sir.

XQ46. Did I correctly understand you to say that when people wanted a A. A. Waterman & Company pen or one manufactured 1755
by that concern they called for a A. A. Waterman & Company pen? A. No, not exactly that; I was speaking of in the trade. As a matter of fact most people who come in our store simply ask for a Waterman pen. I have had very few inquiries either to say L. E. or A. A.; simply a Waterman pen is what they usually ask for, or a fountain pen.

XQ47. When people so ask do you tell them there are two pens, one manufactured by L. E. Waterman & Company and the other by A. A. Waterman & Company? A. No, sir.

XQ48. You simply sell them the pen you have on hand? A. Yes, sir.

1756 *J. Edward Nunn*

XQ49. Without knowing whether in the mind of the customer is the thought of purchasing an A. A. Waterman or L. E. Waterman Company pen? A. The L. E. Waterman has always been best known by us in Baltimore, and I do not think the other has been thought of there.

XQ50. In other words, you act upon this presumption without specifically knowing what is in the mind of each customer? A. Of course I do not know their mind, but I have never had any complaint.

XQ51. But the trade recognizes the difference between the two pens and speaks of the one as being made by A. A. Waterman & Company? A. Yes, sir.

1757

XQ52. Have you had any experience with the A. A. Waterman & Company pen? A. No, sir, I have never sold it.

XQ53. You have never bought any? A. No, sir.

XQ54. Sold any? A. No, sir.

XQ55. Used any? A. No, sir.

XQ56. Are you familiar with the quality of the pens made by the A. A. Waterman & Company since July 1, 1905? A. No, sir.

XQ57. And in determining that the Ideal is one of the best made you have reached that conclusion without considering the qualities of the A. A. Waterman pen? A. No, sir, I have done it on the general reputation and what I have heard; in my own determination, simply what I have heard, and in general dis-

1758

cussions of the trade. I never took one of their pens and wrote with it or used it myself.

XQ58. So without any personal knowledge on the subject or without any personal comparison you have reached the conclusion stated? A. No, sir, I could not say that, I have examined the pens when they have been shown to me by representatives of the company when they have come at different times.

XQ59. Are you familiar with its self-filling qualities? A. I have had them shown to me.

XQ60. Have you examined that feature of them? A. Yes, sir.

1759

XQ61. And with all those in mind you still believe that the L. E. Waterman pen is the standard? A. I think so; the self-filling device of any pen that I have had never appealed to my customers; I was never able to sell them to any extent.

XQ62. Have you ever had any self-filling pen? A. Yes, sir.

XQ63. Manufactured by whom? A. The Waterman people have a pen.

XQ64. L. E. Waterman? A. Yes, sir. I also had a self-filling pen made by the Scharf people; I also had that Remex made also by the L. E. Waterman people that you press on the side.

1760

XQ65. All of those manufactured as the self-filling feature are very similar to the A. A. Waterman pen, aren't they? A. Yes, sir.

XQ66. And you have never shown A. A. Waterman pens having unique features as to self-filling properties? A. No, sir.

XQ67. To any customer? A. No, sir.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ68. The fountain pens which you have described as Waterman pens, which you have stated were known by the trade and public as Waterman pens, were sold to you by the L. E. Waterman Company? A. Yes, sir, and billed by them.

1761

RDQ69. And when people asked for Waterman pens, was there anything ever came to your knowledge that led you to believe that they wanted anything except, or referred to anything except, the Waterman pen put out by the L. E. Waterman Company?

Mr. Stein: Objected to as incompetent, immaterial, irrelevant, calling for the conclusion of the witness and an expression by him of the minds of customers or others, and as not being proper re-direct.

Mr. Watson: Counsel for complainant respectfully calls the Court's attention to the fact that this ques-

1762 *J. Edward Nunn*

tion is in direct reply to one asked by defendant's counsel. It does not call for a conclusion, it calls for the opinion of this witness as a man who has been in the stationery business handling fountain pens for thirty years.

A. No; I have never had a single complaint. The reason I say I never had a complaint, I assume if they had not been what they wanted they would have made some complaint. I took that as a reason for answering no.

RDQ70. As far as the matter has come to your knowledge, does the trade regard the pen stamped A. A. Waterman & Company as a Waterman pen? A. No, we have always considered
1763 the L. E. Waterman as the Waterman pen, that is what it generally brings to my mind.

RDQ71. And as far as the matter has come to your attention, is that the opinion of the trade?

Mr. Stein: Objected to as incompetent, immaterial, irrelevant and not the proper way of proving the fact.

A. Yes, sir, as far as I have heard any expression of opinion from them, it is.

Deposition closed.

Signature waived by consent of counsel.

1764 Adjourned to Friday, April 7, 1911, at 10:30 o'clock, A. M.

Matthew Mullineux 1765

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,
vs.
MODERN PEN COMPANY,
Defendant. 1766

Met pursuant to agreement at the office of Watson & Raymond, 10 Wall Street, New York, April 7, 1911, at 10:30 o'clock, A. M.

Appearances:

Samuel S. Watson, for Complainant.
Morton Stein, for Defendant.

MATTHEW MULLINEUX, a witness of full age, produced on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Watson: 1767

Q1. Please state your name, place of residence and business? A. Matthew Mullineux; my present residence is 161 East 39th Street; my occupation, motor boat supplies.

Q2. Did you purchase a short time since a fountain pen in this city? A. Yes.

Q3. From whom did you buy it? A. From a man named Harry Frank, 421 Broadway, New York.

Q4. When did you buy that pen from Mr. Frank? A. On Monday, the 27th of March, 1911.

Q5. Will you please relate the conversation you had at the time you purchased this pen?

1768 *Matthew Mullineux*

Mr. Stein: Objected to as incompetent, irrelevant and immaterial, no proper foundation laid and no connection shown.

A. I went into this store, in the afternoon, and wanted to see some fountain pens, as I intended purchasing one, and the assistant there showed me some Vulcan pens. I tried these and did not like them and I said, "Now have you a Waterman pen? Do you keep the Waterman pens?" He said, "Yes." I said, "Show me some." So he handed me out a pen, which I tried. It was not satisfactory. I tried two or three others and finally I got a pen that suited my hand.

1769 Q6. Is this the pen you have here, that you produce (showing witness a pen)? A. This is the pen that I purchased from him. Holding the pen up I said, "Has this a spoon feed?"—knowing that one of the latest features of the Waterman pen to a Britisher was a spoon feed. He said, "Yes." So I said, "What is the price of this?" and he said, "$1.60." I said, "What is the usual price." I asked him this because he was selling off. He said "$2.50." I said, "How can you sell these Waterman pens so cheaply?" He said, "We have a large stock on hand and we are clearing off." I said, "All right, and give me a bottle of ink now." He gave me a bottle of ink for ten cents and I paid him $1.70 and went out.

Q7. And the pen you produce is the pen he sold you? A.
1770 Yes, that is the pen he sold me as a Waterman pen.

The pen produced by the witness is offered in evidence and marked Plaintiff's Exhibit No. 107.

Objected to as incompetent, irrelevant and immaterial.

Q8. Is the box which you produce the box in which he gave you the pen? A. This is the box in which he gave me the pen and this is the filler.

The box and contents produced by the witness are offerred in evidence and marked Plaintiff's Exhibit No. 108.

Same objections.

Q9. What else happened about this pen? A. Two days later I was looking through the 'phone book and I saw a large advertisement of Waterman & Co. and I looked at the address and found the initials were L. E. Waterman, corner of Cortland Street and this made me look up the little circular that I had placed in the box in which the pen was sold to me. I found there that the name was A. A. Waterman and I immediately began to think I had been deceived. The following day I went up to the corner of Cortlandt Street and looked at the store but not having the pen with me, I did not go in. On Friday, however, March 31, I made a special trip to the store with the pen in my pocket.

Q10. When you asked for a Waterman pen at the store of Mr. Frank what pen did you expect to receive? A. I only knew of one Waterman. In England we only know one Waterman pen. I thought I was getting a real genuine article when I asked for one; otherwise I would not have bought it. 1772

Q11. Do you know whether the pen that you call a Waterman, a genuine Waterman, is sometimes known as the Waterman Ideal Fountain Pen? A. I did not know that. I never paid particular attention to that. It is simply known as the Waterman pen in England.

Q12. How long have you known about the pen? A. Ten years. I have used them about ten years.

Q13. And the pens that you used and have been familiar with are not the A. A. Waterman pens? A. I never used an A. A. Waterman pen before. 1773

Q14. And since you have purchased the pen, Plaintiff's Exhibit 107, have you found out whether or not it is the kind of a Waterman pen that you expected to buy?

Mr. Stein: Objected to as incompetent, irrelevant and immaterial and not binding on the defendant.

A. I found out that it is not the class of Waterman pen I expected to get.

Q15. When you went into the store at the corner of Broadway and Cortlandt Street did you there see the kind of pen that you expected to buy?

Mr. Stein: Objected to as incompetent, irrelevant and immaterial.

A. Yes.

Q16. And you were familiar with the kinds and styles of pens that were shown you in that store at Broadway and Cortlandt Street? A. Yes.

Q17. And that is the kind you expected to buy when you went into Mr. Frank's store and asked for a Waterman pen? A. Yes.

CROSS-EXAMINATION by Mr. Stein:

1775

XQ18. How familiar were you with the pens at Broadway and Cortlandt Street, or that you saw at Broadway and Cortlandt Street? A. I had used a Waterman for ten years, I suppose, but I lost it some two years ago and I have not had one since.

XQ19. You used one Waterman pen then for eight years? A. Yes.

XQ20. You were familiar with its appearance? A. Yes.

XQ21. Was it an Ideal pen? A. That is a thing I never noticed; I could not say.

XQ22. You never noticed that? A. No.

XQ23. Did you notice whether the pens in Cortlandt Street were marked Ideal? A. No, I looked for Waterman. I thought there was only one Waterman.

1776

XQ24. The thing you complain about is that there are two Watermans doing business in fountain pens? A. I will not say I complain of that.

XQ25. That is the thing that you thought misled you? A. Yes. What I complain of is that one coming a stranger to a country with the idea that there is only one Waterman, is deceived by the present method of business.

XQ26. You were deceived by the fact that you had used one Waterman pen for eight years and you do not know whether it was an Ideal or not? A. I only know that it was a genuine Waterman pen.

XQ27. How do you know it was if you don't know whose name was on it? A. I did know. It had a name.

XQ28. What name? A. On the Waterman pen that I used there used to be a name about that space (indicating).

XQ29. What was the name? A. Waterman.

XQ30. Just Waterman? A. I did not know any initials. I never looked for the initials. As far as I can remember it was "Waterman's Fountain Pen."

XQ31. You are not sure whether or not there were any initials attached? A. No, I am not sure.

XQ32. When you bought this pen at Frank's and tried it out you were satisfied with it? A. Yes, I was satisfied then.

XQ33. Are you satisfied now? A. No. 1778

XQ34. Why—because it is not an L. E. Waterman pen? A. That is one reason (pointing to the pen). See the ink coming out of that. That shows it is not a spoon feed.

XQ35. How much experience have you had with fountain pens outside of the use of this one pen for eight years? A. I have had Mabie Todd pens—Mabie, Todd & Bard, I believe. They used to make the Swan pen.

XQ36. Have you any technical knowledge of fountain pens or have you made any technical studies? A. No, I cannot say I have.

XQ37. Do you know the different parts of a pen and the peculiar mechanism of each pen? A. No, I cannot say I do. I know the parts of a pen but I do not know the peculiar mechanisms. 1779

XQ38. Are you here under subpoena? A. No.

XQ39. How much have you been paid for coming here? A. Nothing at all.

XQ40. How much have you been promised for coming here? A. Nothing at all.

XQ41. Where do you live? A. My permanent address?

XQ42. Yes? A. 627 Broughton Street, Vancouver.

XY43. Are you in business for yourself? A. Yes.

XQ44. What is the name of your business? A. Vancouver Motor Launch Supply Company.

1780 *Matthew Mullineux*

XQ45. In Vancouver? A. In Vancouver, Coal Harbour. It is on the water, the B. C. Motor Launch Supply Company.

XQ46. How long have you been in New York? A. Three weeks tomorrow.

XQ47. When do you leave? A. I may be going any day. I am just waiting for some samples.

XQ48. How is it you came here to testify this morning? A. I was asked to come.

XQ49. By whom? A. By Mr. Watson.

XQ50. How did you come to see Mr. Watson; who sent you to Mr. Watson? A. In Waterman's store Mr. Raymond came in and asked me would I testify. I said yes, because I don't like
1781 to be taken in in this way, whether wilfully or otherwise. I said I would be very glad to testify if my evidence would put a stop to such practices.

XQ51. Don't you think it is rather unfair for you to testify here that you have been "taken in," merely from the fact that you are accustomed to use a Waterman fountain pen manufactured by a firm of whom you do not know, bearing a mark that you do not recollect, and because there happened to be another A. A. Waterman & Co. concern doing business in New York? A. No.

Q52. And a concern that did business in New York before you ever bought a Waterman fountain pen? A. I don't know how long A. A. Waterman has been in business, but as a Britisher
1782 I only know one Waterman pen.

XQ53. And as a Britisher you think you have a right to come here and testify under oath that you were deceived because you were handed a pen bearing distinctly upon it the name A. A. Waterman & Co., New York, when in your British home you happened to buy an L. E. Waterman Company pen? A. There is only one Waterman pen known in Great Britain.

XQ54. Do you think Great Britain constitutes the world? A. No.

XQ55. Do you believe a man has a right to do business in America who does not care to do business in England or Great Britain? A. Certainly.

XQ56. And it is because in Great Britain so far as you know only one pen is known that you feel you have been deceived, because you happen to buy a pen made by a concern that was manufacturing and selling similar pens before you had ever bought a fountain pen?

> Mr. Watson: Counsel for complainant takes exception to the speeches of counsel for defendant and desires to call the Court's attention to the alleged statements of fact contained in these speeches, of which there is no evidence in this record and which counsel for complainant is convinced are not true statements of fact and that the evidence so far in this record shows that they 1784
> are not statements of facts.

A. I feel I have been deceived in the same way I should feel deceived if I had bought a Steinway piano in some country outside of America and then found that it was a different make of Steinway.

XQ57. Suppose the piano you had bought outside of America was manufactured by a concern that had been manufacturing pianos under the name of Steinway before you were born and selling them under that name before you were born, would you still feel that that concern was deceiving you by selling you a piano under that name? A. I do not say the concern was deceiving me but what I understand by a Steinway piano is something that I have in my mind, that I know. Another piano may 1785
be got up exactly like it and if it is not the real Steinway I should feel I had been deceived.

XQ58. Do you believe that anybody purposely endeavored to fool you or deceive you into buying a pen not made by the people that you thought were making the pen? A. That is rather a difficult question to answer.

XQ59. I ask for an answer?

> Mr. Watson: I object to it as it calls for the operation of the mind of some other person, and not of this witness and is entirely improper.

Mr. Stein: I will change the form of that question.

XQ60. In testifying this morning that you were deceived, do you want us to understand that you believe that somebody endeavored to fool you, or that you were simply mistaken in that you had no prior knowledge of A. A. Waterman & Co., and its pens?

Same objections.

A. I can say this, that if I had known that there was any other make of Waterman pens than the one I had been accustomed to use I would have been much more careful in my selec-
1787 tion.

XQ61. Did you ask for any specific Waterman pen? A. No, I asked for a Waterman pen because I thought there was only one Waterman in the world. That is what I thought at the time.

XQ62. And you did not know much about fountain pens and you just went on the name of Waterman? A. I knew as much as the average writer. I am not an expert in fountain pens.

XQ63. But so far as the fountain pens went, you knew the name Waterman and you purchased on that name? A. Yes.

XQ64. What do you know about spoon feed? A. A spoon feed is a feed I saw advertised by Waterman in one of the magazines and I said the next time I get a pen it shall be a spoon
1788 feed.

XQ65. What is a spoon feed? A. A feed that comes through corrugations underneath the pen. Instead of being perfectly flat under the pen it is wavy.

XQ66. And that wave is visible to the eye? A. No, not unless you take it off.

XQ67. How did you happen to know about this particular feed? A. Because I read about it.

XQ68. And you read about the interior? A. Yes, and I saw a diagram of it and I gathered from that that it prevented an overflow.

XQ69. Have you examined this pen, Exhibit 107? A. No.

XQ70. To see whether or not there was a spoon feed? A. No, I was advised not to take the pen to pieces.

XQ71. Who advised you? A. You will find most instructions of pen dealers are not to take them apart. I found out definitely about it of course in a Waterman store.

XQ72. Your time is rather valuable to you is it not? A. It is fairly valuable, yes.

XQ73. And the affairs of L. E. Waterman and A. A. Waterman & Co. are of no concern to you, are they? A. No, no concern to me.

XQ74. Have you had any discussion with anybody as to being recompensed for the time you are spending on this matter? A. The only thing I was told—I did not ask for anything—was that Mr. Raymond said any time I lost I would be paid for, if I liked to claim it. 1790

XQ75. At what rate? A. He did not say any rate at all.

XQ76. What rate have you determined in your own mind? A. I have determined on each day I have been here, $5 a day.

XQ77. $5 will amply pay you for the loss of time? A. Yes.

XQ78. What are you accustomed to pay for waterman pens in England, in dollars and cents? A. I suppose about $2.50. It is ten and six pence. Not quite $2.50.

XQ79. For a pen similar to that which you did purchase at $1.60? A. Yes. 1791

XQ80. What is the price for the Waterman pen that you know of in Vancouver? A. I really do not know. I have not priced them in Vancouver, but I can tell you that some years ago in Victoria, the size next to the smallest size was $4.

XQ81. What is the price in New York? A. $2.50.

XQ82. You knew that this Waterman that you speak of was a standard pen in England? A. The Waterman that I had in mind, you mean?

XQ83. Yes, it was standard? A. Yes, it is known as the Waterman pen.

1792 *Matthew Mullineux*

XQ84. You realized that it had a fixed price throughout the world, didn't you? A. I was not aware of that, no.

XQ85. Did you believe so? A. It never entered my head. This man Frank was selling off and that is why I went into his store.

XQ86. In other words, you went in to buy a bargain? A. Yes.

XQ87. Now let us come right back to the one proposition developed in your testimony. You have testified that you were deceived and the only ground for such testimony is the fact that in England, so far as you knew, there was only one kind of Waterman pen known; and the kind of pen you bought here
1793 was not the kind of Waterman pen that you knew of and purchased in England; is that correct? A. It is correct, yes.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ88. Have you known anything about the Waterman pen in Canada; have you seen it there? A. Yes, I have seen the Waterman pen there.

RDQ89. And was that Waterman that you have known in England the same kind of pen? A. Yes, when anyone has been asked the make of the pen and says "Waterman," there is only one Waterman, so far as my experience goes, in England and in Vancouver.

1794 RDQ90. And that is the pen you expected to buy? A. That is the pen I expected to buy.

RDQ91. And that is the pen you did not get? A. I certainly did not.

RDQ92. I have taken apart Exhibit 107. Will you kindly look at it now and see if that is the spoon feed of which you have seen cuts?

Mr. Stein: I object to the procedure by which counsel dissects the different parts of exhibits in the case. My understanding is that exhibits are rather sacred and cannot be taken apart without the consent of other counsel

or the Court, and that exhibits must not be tampered with in any way. I further object on the ground that the witness has not been proved competent to answer this question.

Mr. Watson: Counsel for plaintiff desires it to appear on the record that he has taken the gold pen from Exhibit 107 in the presence of defendant's counsel and was working at it for several minutes directly in front of defendant's counsel and there was no objection made until this question was asked the witness.

A. No, this is not a spoon feed.

1796

RE-CROSS EXAMINATION by Mr. Stein:

RXQ93. What concern advertised the spoon feed? A. L. E. Waterman & Company.

RXQ94. When did you first know that L. E. Waterman & Company advertised the spoon feed? A. I suppose in the last month. It was in a magazine I saw it, on the railroad.

RXQ95. Before or after the purchasing of this pen? A. Before.

RXQ96. And did you then see that it was an L. E. Waterman advertisement? A. I did not notice the initials. I did not notice the initials until I happened to be looking through the 'phone book.

1797

RXQ97. Did you re-examine that cut? A. Yes, I re-examined that cut and I re-examined this circular.

RXQ98. Where was that cut? A. It was in a magazine I had. I cannot tell you the name; they advertise in so many magazines.

RXQ99. When did you re-examine that cut? A. After March 27th. I saw the cut again in Waterman's publication that they have.

RXQ100. At their own store? A. Yes.

RXQ101. When did you re-examine the cut? A. That I first saw?

RXQ102. Yes? A. I have not re-examined that at all.

RXQ103. So you do not know now whether the cut you saw was issued by L. E. Waterman & Company or by another Waterman, do you? A. I can only rely on my memory.

RXQ104. But your memory is a blank as to the initials of the Waterman that advertised that cut? A. Yes, but I have the cut in my memory.

RXQ105. And that cut in your mind shows the name L. E. Waterman & Co.? A. By cut I mean the diagram of the thing. That did not show anything. I think I could make a rough sketch of it now.

1799 RXQ106. The experience that you mention is experience based on the purchase of a Waterman pen in England and on the purchase of a Swan pen; is that correct—your experience in fountain pens? A. Unless you call it experience to see advertisements and cuts from time to time in the papers; otherwise the two that you say.

RXQ107. After using the pen purchased in England eight years you cannot tell us whether the word Ideal appeared on it? A. I cannot swear to that.

RXQ108. You cannot swear to the initials that appeared upon that pen? A. I cannot.

RXQ109. You cannot state positively that the pen you used in England was not a pen manufactured by A. A. Waterman & Company? A. Yes, I could swear to that.

1800 RXQ110. How could you swear that it was a pen made by L. E. Waterman? A. Because there is only one Waterman in England and that is L. E. Waterman.

RXQ111. That is as far as your experience goes? A. Yes.

RXQ112. Are you willing to swear that A. A. Waterman & Co. have not been doing business in England for more than ten years? A. I could not swear to it.

RXQ113. You have no personal recollection as to any name on that pen except the name Waterman? A. Except the name Waterman.

RXQ114. You will not swear positively whether that name was preceded by the intitials A. A. or L. E.? A. No. I can swear that it was what was called a genuine Waterman pen.

RXQ115. So you thought it was the genuine Waterman pen? A. Yes, because I got it from the Army & Navy Store in England, a firm that when it says genuine Waterman means genuine Waterman and no other.

RXQ116. What initials were on that pen? A. I cannot tell you that.

RXQ117. Are you endeavoring to stamp on this record by your testimony what the majority of people of the British Isles mean by Waterman pen when your sole experience in fountain pens has been the purchase of one Waterman pen made by a concern that you cannot mention and the purchase of one Swan pen?

1802

Mr. Watson: Counsel for plaintiff calls the attention of the Court to the unfair form of this question and the mis-statements of the witness' testimony.

A. Will you put that question in another form? It is rather a long question.

RXQ118. I cannot change its form? A. I am not endeavoring to stamp that on this record but it is my firm belief that by "Waterman pen" the British people have in their mind the genuine Waterman pen of L. E. Waterman & Co.

RXQ119. With how many British people have you discussed fountain pens throughout your entire life? A. Probably with every man I have come across who has had a fountain pen.

RXQ120. Is that answer made seriously? A. Sure it is. 1803

RXQ121. And with how many of them have you discussed what constituted the genuine Waterman fountain pen? A. I have not discussed it with any one. That is in England; you are referring to England, are you not?

RXQ122. Yes.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ123. How long have you used a Waterman pen did you say? A. About ten years.

1804

RDQ124. Is the Waterman pen that you have been familiar with generally known in England? A. I say there is only one name known and that is "Waterman pen," and it is the pen one sees advertised there largely.

RDQ125. You have seen it advertised largerly? A. Yes, in magazines you pick up, and periodicals, they have their advertisements in, generally.

MATTHEW MULLINEUX.

Adjourned to Saturday April 8th, 1911, at 10:30 A. M.

1805

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

vs.

MODERN PEN COMPANY,
Defendant.

1806

Met pursuant to adjournment at the office of Watson & Raymond, 10 Wall Street, New York, April 8, 1911, at 10:30 in the forenoon.

Appearances:

Samuel S. Watson, for Complainant.
Morton Stein, for Defendant.

HARRY M. PARCELS, a witness of full age, produced on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, place of residence and business? A. Harry M. Parcels; 248 Audubon Avenue, New York City; occupation; real estate business.

Q2. Did you have occasion recently to purchase a fountain pen? A. Yes, sir.

Q3. Where did you buy it? A. The north side of 42nd Street somewhere between Third and Fourth Avenue. What the name of the place is I don't know.

1808

Q4. Near the Grand Union Hotel? A. Just opposite.

Q5. When did you buy this pen there? A. Monday.

Q6. April 3rd? A. April 3rd.

Q7. 1911? A. Yes.

Q8. Please state the circumstances under which you purchased this pen?

Mr. Stein: Objected to as incompetent, irrelevant and immaterial, no proper foundation laid and no connection shown.

A. To begin with, I lost a Waterman fountain pen. I was going through 42nd Street and saw a sign in a winodw "Pens for 95c." or "98c.,"I forget which; "Selling out on account of moving." I went to look over the 98c. ones and I saw what I 1809 supposed to be a Waterman pen in their case—in a plush case, in their case, and I told them that that was a pen that looked pretty good to me; it was the size I wanted and I tried it and I asked how much he wanted for it and he said $2.50 on account of moving. I asked if he was going out of business. He said no; he said it was on the window where they were going to move to . The cap of the pen was chipped. He tried to get a new cap and could not get one to fit; so I told him I would take it just as it was for $2. He said, "All right," and he gave me a glass filler and he wanted to give me a guarantee for a year, or something like that but I told him I did not think it was

1810 necessary, that I would come back if the pen was not right. Then I told him I would go down to Cortlandt Street and get a new cap with a clip on it, as I was down that way more often than I was up to 42nd Street; and he said it was not necessary for me to go down to Cortlandt Street, down to Waterman's, if I came up there he might fix me up with one. I told him that I would not be up there and I was going down to Cortlandt Street. I went down to Cortlandt Street, yesterday I think, and asked for a new cap with a clip and they told me it cost sixty or sixty-five cents; and the young lady asked me if I knew I did not have a Waterman pen. I told her I did not know any such thing. I told her I bought it for a Waterman
1811 pen and that was all I knew about it. She called another gentleman, the manager of the place, I guess he was, and I told him just the same as I am telling you.

Q9. You asked for a Waterman pen when you bought the pen? A. I asked him, "Is that a Waterman pen?" He said, "Yes." I said, "Bring it out here and I will try it."

Q10. When you called for a Waterman pen what make of pen did you expect to get?

Mr. Stein: I move to strike out the long answer just given by the witness and serve notice that we will move to strike out the answer on final hearing on the ground that it is irresponsive and contains conclusions of the wit-
1812 ness, and not binding on this defendant. I now object to the question just asked by Mr. Watson on the ground that it is incompetent, irrelevant and immaterial and calls for the expression of the operation of the witness' mind at the time.

A. The same kind that I got down at Cortlandt Street and Broadway.

Q11. How long have you been familiar with the pens obtained from Cortlandt Street and Broadway? A. I obtained them indirectly. If there was anything the matter with the pen that is where I went to have it fixed. I have changed pens there and

had them filled. That is the only place I would go to if I wanted to get it fixed up.

Q12. Have you ever owned or carried Waterman's Ideal fountain pens? A. Yes.

Q13. How long? A. I don't know; off and on—the last one I had I had for four years and lost it.

Q14. How long have you been familiar with Waterman's Ideal fountain pens? A. Ten or twelve years.

Q15. And you knew that as a Waterman pen? A. Yes.

Q16. Have you got the pen with you that you purchased on 42nd Street? A. Yes.

Q17. Will you please produce it? A. (The witness produces a pen.) 1814

The pen produced by the witness bears the name "A. A. Waterman & Co., New York, Patented Dec. 12, 1899," and plaintiff's counsel presents it to defendant's counsel for inspection.

CROSS-EXAMINATION by Mr. Stein:

XQ18. Are you under subpoena? A. Yes.

XQ19. How much was given to you when the subpoena was served? A. $2.85.

XQ20. Are you in business for yourself? A. I am in the real estate business, but I am not on any salary; I am on a commission. 1815

XQ21. In whose office? A. A. W. Beckley, 32 Union Square.

XQ22. Have you ever used any fountain pen other than the pens made by L. E. Waterman Company, except the one produced by you this morning? A. No, not since I was a kid. I think I have one up in the trash drawer now.

XQ23. You were very particular to get a pen made by L. E. Waterman Company? A. I buy at Waterman's down at Cortlandt Street. That is the only pen I ever will buy.

XQ24. The "Ideal" pen? A. I always knew it as a Waterman pen.

1816

XQ25. What were the marks on the pen that you always knew as a Waterman pen? A. Now that I come to think about it the only mark they ever had on a Waterman pen was a circle with "Ideal" in it.

XQ26. You recognize it as the trade-mark of the L. E. Waterman Company? A. Now I do, yes.

XQ27. But you did not when you purchased this pen? A. No, because I thought a Waterman was a Waterman and that is the end of it.

XQ28. Had you ever had any experience with pens made by the A. A. Waterman Company before? A. No.

XQ29. You did not know anything about those pens, did you?

1817 A. No.

XQ30. Their qualifications, or anything else? A. I knew the pen I had was a good one, and I knew it was as good the day I lost it as the day I bought it, and when I went to buy again I knew that was what I wanted.

XQ31. Did you know whether the A. A. Waterman pen was a better pen? A. No, I took it for granted that the Waterman pen was as good as you could get in the way of a pen; that is what I wanted, the best.

XQ32. The fact is, you were satisfied with an L. E. Waterman pen? A. Yes.

XQ33. And wanted to continue with that pen? A. Yes.

XQ34. Without regard to whether there were better pens on

1818 the market? A. Yes, that is the idea. I thought I was getting it cheap and that is the reason I bought it.

XQ35. Who asked you to come here to testify? A. To begin with, a gentleman over in Waterman's wanted to get my name. I gave it to him.

XQ36. Can you answer questions? A. Who asked me to testify?

XQ37. Yes. A. I was served with a notice last night to come down here.

XQ38. Who first asked you to testify in this case? A. A gentleman came uptown last night, I don't know his name, a lawyer.

1819

XQ39. Had anybody talked to you before? A. No, not about testifying at all.

XQ40. Wanted your name? A. Wanted my name.

XQ41. For what purpose? A. For the simple reason that they said they had had some similar cases where people had gone in to get a Waterman pen and did not get it, and I gave them the idea that I just wanted what I asked for.

XQ42. You saw these pens in the window marked at 95 or 98 cents? A. The man was moving and he had an ad. in the window, a big sign, I think it was, 95 or 98 cent pens, and I went, with that for a leader, and when I went inside I saw this pen in the case.

1820

XQ43. You knew that the Waterman pen was a pen sold all over the world, didn't you, at a fixed price? A. At a fixed price.

XQ44. Yes. A. I have always been under that impression.

XQ45. And were you under that impression the day you walked up to that store? A. Yes.

XQ46. And that the price for one of the pens made by L. E. Waterman & Co. would be the same in any store in any part of the United States A. Except they were selling out, or something, and wanted to make some inducement instead of moving that stock.

XQ47. Don't you know that the L. E. Waterman Company takes back pens from people to whom they sell them, at cost price at any time on demand? A. No.

1821

XQ48. You never heard about it? A. No.

XQ49. Give us the name of the person at Cortlandt Street who wanted your address? A. I did not ask for the name. A young lady waited on me. She called this gentleman. I don't know his name at all.

XQ50. Was he a lawyer? A. Not to my knowledge; he was an employee of Waterman.

XQ51. You were willing to give your name and address to different people without getting from her the name of the person who wanted the information? A. I did it, yes.

1822

XQ52. Have you been promised anything for coming here? A. No. I was promised that I would not be over half an hour here, and my half hour is up.

The pen produced by the witness is offered in evidence and marked Plaintiff's Exhibit 109.

By Mr. Stein:

XQ53. What is the name of the man at whose store on 42nd Street you bought Exhibit 109? A. That I don't know.

XQ54. What is the name of the clerk? A. I don't know that.

1823 XQ55. Have you made any effort to find out? A. No.

Deposition closed.

(Signature waived.)

WARREN N. LANCASTER, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, age, residence and occupation? A. My name is Warren N. Lancaster; my age is 61; my occupation is manufacturing fountain pens.

1824 Q2. Where do you live? A. Baltimore, Maryland, at the Marlborough.

Q3. Are you here under subpoena? A. Yes.

Q4. When were you subpoenaed? A. Just as I was going home last night. I was thunder struck; I was taken by surprise; I didn't expect to be here today.

Q5. How long have you been in the fountain pen business? A. I started in in a small way in 1879.

Q6. Have you been in the fountain pen business ever since? A. Yes.

Q7. During that time have you been making and selling fountain pens? A. Yes, sir.

1825

Q8. Have you had at any time during this period a factory of your own? A. Yes, sir.

Q9. During what period? A. In 1885 I manufactured the Automatic pen at Norwich, Connecticut.

Q10. How long did you have a factory then? A. About two years.

Q11. Did you make rubber holders at that time? A. No, sir; they were made for me.

Q12. Did you make the gold pens at that time? A. No, sir.

Q13. You obtained these parts and put them together and adjusted the pens? A. Yes.

Q14. Did you have a factory at any other period? A. Yes.

Q15. When? A. March 27, 1903; I had that factory until 1826
February 7, 1904, when it burned down.

Q16. It was burned out in the Baltimore fire? A. Yes.

Q17. Then what? A. I started up again in August, 1904, after that fire and continued until a year ago this month, the 19th of April.

Q18. While you had your factory during this period from 1903 to 1910, with the exception of the few months that you discontinued while replacing your factory, did you then manufacture the rubber holders in your factory at Baltimore? A. No, I had them made outside.

Q19. All of your rubber holders at Baltimore? A. Yes.

Q20. You did not do any turning of rubber in your factory at Baltimore? A. After the fire I did not for six or eight months, 1827
in August.

Q21. During the time that you had your factory at Baltimore did you turn your rubber holders? A. Yes.

Q22. Did you manufacture the gold pens yourself at that time? A. No, I never did that.

Q23. You bought them from gold pen manufacturers? A. Yes.

Q24. And you put the parts together in the factory and adjusted the pens there? A. Yes.

Q25. During the period of thirty odd years that you have been in the fountain pen business you have got your parts from

1828 different people and put your pens together yourself, except the periods you have mentioned?

Mr. Stein: I object to that as absolutely irrelevant and immaterial as to any issue here presented, and on the ground that Mr. Lancaster has not been shown to constitute the trade, and he is not a party to this action.

A. Yes.

Q26. During this thirty odd years that you have been in the fountain pen business have you sold fountain pens personally yourself? A. Yes.

Q27. To what class of persons have you sold these foun-
1829 tain pens?

Mr. Stein: Counsel for defendant interposes the same objection, and upon consent it is understood that the same objection is introduced to this entire line of questions.

A. To jewelers and stationers and corporations.

Q28. In what part of the country? A. As far east as Bangor, Maine, and as far west as Omaha, as far north as Minneapolis and as far south as Richmond. Of course I have done a great business all over the world.

Q29. Did you personally visit the stationers and jewelers in this large section of the United States that you have mentioned? A. Yes, a great many.

1830 Q30. Did you make these trips frequently, yearly or monthly, or how often? A. My western trips I made always in January; about once a year west of Chicago. I would continue with what I had made up until I had sold out.

Q31. Were you in contact with the trade in selling fountain pens in the eastern section of the United States north of Richmond? A. Yes.

Q32. How often did you visit the trade in that section of the country? A. Every week; I was always out traveling.

Q33. How long have you been traveling and selling fountain pens around the country in the territory you have just mentioned? A. How often?

Q34. How long have you been selling pens? A. Since 1879.

Q35. And during these trips have you visited the principal cities and towns in the territory you have mentioned? A. Yes, a large number of them.

Q36. And when you visited these cities and towns your business was to sell fountain pens? A. Yes, sir.

Q37. And you visited the trade? A. Yes.

Q38. To sell fountain pens? A. Yes.

Q39. Have you been familiar with the fountain pens put on the market by the L. E. Waterman Company and Lewis E. Waterman, its predecessor? A. Yes.

Q40. How long have you been familiar with the fountain pens put on the market by the L. E. Waterman Company and Lewis E. Waterman, its predecessor? A. 1882 or 1883.

Q41. Do you know by what name these pens are commonly referred to and called by the trade during this period? A. Called a Waterman pen.

Q42. Has that been the fact all the time? A. The first part it was Waterman pen; and then it became Waterman's Ideal fountain pen.

Q43. What is it called today? A. Waterman's Ideal Fountain Pen.

Q44. Is it referred to as Waterman's pen? A. Yes.

Q45. Is it commonly referred to as Waterman's pen? A. Yes.

Q46. And is that name, "Waterman's Pen" commonly spoken of in the trade? A. Yes.

Q47. How long has that been the fact? A. Since 1882 or 1883, somewhere along there, that I have known it to be sold to the trade; along about that time.

Q48. In later years it has been very well known to the trade, has it not? A. Tremendously.

Q49. Have you talked with dealers during this period about Waterman's pens? A. Yes, indeed.

Q50. As far as the matter has come to your personal attention and knowledge, how do the trade regard the Waterman's pens put out by the L. E. Waterman Company, as regards quality? A. Very high.

1834

Q51. Do you know whether they are regarded as the standard pens on the market or not? A. I should say it was the standard. I have used that name myself on my own pens, "Standard;" but the Waterman pen is superior to mine.

Q52. Do you know of any pen on the market that is superior to Waterman's Ideal fountain pen? A. No, sir.

Q53. Have you been familiar with the fountain pens stamped "A. A. Waterman & Co., New York," which have been on the market for the last four or five years? A. Yes.

Q54. How familiar are you with these pens? A. I have sold them.

Q55. How long have you sold them? A. The last year.

1835 Q56. Previous to that time were you familiar with the pens stamped "A. A. Waterman & Co." which were on the market? A. Yes, manufactured them.

Q57. Have you examined the pens which have been on the market, or any of the pens which have been on the market, stamped "A. A. Waterman & Co." during the last four or five years? A. Have I examined them?

Q58. Yes. A. Yes.

Q59. How frequently? A. A great deal since 1902.

Q60. Have you repaired these pens? A. Yes.

Q61. Have you made a business of repairing all kinds of fountain pens? A. Yes.

Q62. For how long? A. All my life since I have been in
1836 the pen business. I don't know any other business. Thirty years.

Q63. The repairing of pens has always been a part of your pen business? A. Yes.

Q64. And have you repaired the pens stamped "A. A. Waterman & Co."? A. Yes.

Q65. Have you been repairing pens stamped "A. A. Waterman & Co., New York," during the last five or six years? A. Yes.

Q66. Almost daily. A. No, not almost daily, weekly.

Q67. As regards the rubber parts of the Waterman Ideal Fountain Pen, can you speak as to the quality of the rubber in the Waterman's Ideal Fountain Pen? A. Yes.

Q68. Please state what the quality of rubber is in the Waterman's Ideal Fountain Pen?

Mr. Stein: Objected to as immaterial and irrelevant.

A. I found it a very high grade.

Q69. Do you know of any better rubber used in fountain pens, of anybody's make, than is found in the Waterman Ideal Fountain Pens that have come to your attention? A. No, sir.

Q70. How does the quality of the rubber in the Waterman's Ideal Fountain Pens that have come to your attention, compare with the rubber in the pens stamped "A. A. Waterman & Co., New York," that have also come to your attention? 1838

Mr. Stein: That is objected to as incompetent, irrelevant and immaterial, and no proper foundation laid.

A. The Waterman's Ideal rubber that they obtain is unequalled. Nobody can make the rubber to compare with the L. E. Waterman rubber. You cannot get it satisfactory. You could not buy it. There is something about the rubber that is superior to anything.

Q71. How does the rubber in the pen marked "A. A. Waterman & Co., New York," that has come to your attention, compare with the rubber in the Waterman Ideal Fountain Pen? A. It does not compare with it; it does not equal it. It looks well, but it does not compare with it.

Q72. When you say it does not compare with it, do I understand you to mean it is not as good? A. It is not as good. 1839

Q73. Referring now to the gold pen in Waterman's Ideal Fountain Pens, what can you say as to the quality of the gold pens in Waterman's Ideal Fountain Pens?

Objected to on the same grounds.

A. High class.

Q74. Do you know of any pens that are superior to those in Waterman's Ideal Fountain Pens? A. No, sir, I do not.

Q75. How do the gold pens in the fountain pens stamped "A. A. Waterman & Co., New York," which have come to your

attention, compare with the gold pens in the Waterman Ideal Fountain Pens? A. They do not equal it.

Q76. Do I understand from your answer that the gold pens in the A. A. Waterman & Co. fountain pens are inferior to those in Waterman's Ideal fountain pens? A. Yes.

Q77. In what way are they inferior? A. The points, the iridium points.

Q78. Referring to the workmanship of the rubber parts of Waterman's Ideal fountain pens, what can you say as to the quality of the workmanship in the Waterman Ideal fountain pens? A. Unequalled; the very best.

1841 Q79. What can you say of the workmanship of the fountain pens stamped "A. A. Waterman & Co., New York," which have come to your attention, as compared with the Waterman Ideal fountain pens? A. They are fair, but they cannot compare with the L. E. Waterman.

Q80. In the manufacture of fountain pens and in your experience with them and their manufacture, do you find that there is any special skill required to adjust the gold pen and feed and holder together? A. That is the manufacturing of a fountain pen. It takes years of experience to do it, to get the proper adjustment.

Q81. Does it require high skill to do that work? A. Yes.

Q82. As regards the Waterman Ideal fountain pens, do you find, and have you found, that the adjustment in these pens is
1842 good or bad? A. L. E. Waterman—very good.

Q83. Do you know of any fountain pen on the market where the adjustment of these parts is superior to that in the Waterman Ideal fountain pen? A. With my own pen I could equal it, if I have the goods.

Q84. Any other pen that you consider superior? A. No.

Q85. You consider the adjustment of your pen superior to that of the Waterman Ideal Fountain Pen? A. No. I can equal it.

Q86. Is the adjustment of the parts of the fountain pens stamped "A. A. Waterman & Co., New York," which you

1843

have seen, superior or inferior to the adjustment of the parts of the Waterman Ideal Fountain Pen? A. Inferior.

The same objections are made to all this line of examination.

Q87. What part or what element does the adjustment of the parts of a fountain pen play in the production of a satisfactory writing instrument? A. Why, the adjustment of it.

Q88. I don't understand your answer. Will you please explain what you mean? A. To get a perfect writing instrument the point section, the feed and the gold pen must be adjusted, and the point of the gold pen also must be adjusted.

Q89. Is this an important or unimportant element in making a good fountain pen? A. Most important. 1844

Q90. Have you compared the Waterman's Ideal fountain pens in the last five or six years, that have been on the market and have come to your attention, with the fountain pens stamped "A. A. Waterman & Co., New York," that have been on the market and have come to your attention during the last five or six years, as to which is the better writing instrument? A. Yes.

Q91. Which have you found to be the better writing instrument? A. Waterman's Ideal fountain pen.

Q92. What is there about the pens stamped "A. A. Waterman & Co., New York" that have come to your attention that you found defective? A. The feed and the gold pen. 1845

Q93. Did you find the adjustment of the parts perfect or defective? A. Defective. Of course I can take an A. A. Waterman pen and adjust it and it will make a first class writing instrument; but I cannot get them to be made as they should be, the way they used to be made.

Q94. As you have found them on the market, have you found them a satisfactory writing instrument? A. Well, they are fair.

Q95. How do they compare with the Waterman Ideal fountain pens which you have found on the market? A. They are not

equal. They are better than a good many pens on the market, but it is not as good as the L. E. Waterman pen.

Q96. When dealers speak of Waterman pens, what is it commonly understood that they mean?

The same objections apply to all this line of examination.

A. L. E. Waterman.

CROSS-EXAMINATION by Mr. Stein:

XQ97. When did you arrive in New York? A. I arrived here
1847 Wednesday afternoon.

XQ98. And on Wednesday did you see anybody connected with the L. E. Waterman Company? A. Wednesday evening I did.

XQ99. Who? A. This gentleman here.

XQ100. Where? A. At the Breslin Hotel.

XQ101. By appointment? A. Yes, by appointment.

XQ102. When and where was the appointment made? A. Baltimore.

XQ103. By "this gentleman" you refer to Mr. Samuel S. Watson who just examined you on behalf of the complainant? A. Yes.

XQ104. Whereabouts in Baltimore was this appointment
1848 made? A. At my home. He asked me when I was going to be in New York.

XQ105. Where is your home? A. The Marlborough Hotel, Baltimore.

XQ106. Where is your place of business? A. At the Marlborough. My office is there.

XQ107. Had he any appointment to meet you at the Marlborough? A. No, sir.

XQ108. Had you ever met him before? A. Yes.

XQ109. Where? A. In the court; a lawsuit in court.

XQ110. He was counsel in a case in court? A. Yes.

1849

XQ111. Tell us what took place at the Marlborough in Baltimore last week when Mr. Watson called on you? A. He called on me; he said he happened to be in the city and he called. He telephoned to me and asked where I was. I asked him to come up to the house and he came up.

XQ112. What day was that? A. One day last week; I cannot say which day now. It was in the evening. I think it must have been Thursday.

XQ113. Thurdsay of the past week, ten days ago? A. Last week Thursday.

XQ114. A week ago last Thursday? A. I am not positive now. Let me see where I was Thursday. No it was not then. I think it was Monday night this week.

1850

XQ115. What did he say to you? A. He asked me about my business and wanted to know something about the Colonial Pen Company and A. A. Waterman. I had not anything to tell him about them and he just spent the evening in a social way. He asked me when I was going to be in New York. I said I thought I would be in New York Wednesday. He asked me where I stopped and I said at the Breslin. He said, "I will see you there" and he did see me. I think I told this gentleman this week, I think it was Monday night, this week, that he called on me.

XQ116. You had an enjoyable evening? A. Yes.

XQ117. How long did that enjoyment last? A. Until 12 o'clock, with my wife and family.

1851

XQ118. And it started when? A. About eight o'clock, or after.

XQ119. Tell us what took place in that four hours time? A. Just a social time. We all sat there and talked socially and he asked me if I had books belonging to the A. A. Waterman Company. I had not anything of that kind, they were all burned up. He did not ask me to meet him in New York; he asked me when I was going to be there.

XQ120. Confine yourself to telling us what took place regarding fountain pens or a discussion regarding fountain pens and of this lawsuit and of your testimony? A. This what?

1852

XQ121. Lawsuit? A. Of mine?

XQ122. The present one of L. E. Waterman Company against Modern Pen Company? A. I don't just remember what it was. He asked me if I did not buy out the Colonial Pen Company. I told him I did. He asked me about A. A. Waterman, if he was not in the employ of the Colonial Pen Company. I told him he was; he was in the company; he sold out everything there in Boston to me and I moved it to Baltimore. He wanted me to find some books but I hadn't them, they were burned up. I told him I had the stock book of the Colonial Pen Company and part of the certificates.

XQ123. Did he talk to you about this litigation of the L.
1853 E. Waterman Company against the Modern Pen Company? A. I knew without his telling me.

XQ124. Did he talk to you about it? A. I don't remember what he said about it. I knew that he had a case and was going to examine some witnesses the next day there.

XQ125. How did you know he had occasion to do so? A. Had occasion to examine witnesses?

XQ126. Yes? A. I knew it through a man in Washington that they were going to examine. I knew it last—a good while ago; I knew it from Mr. Geyer, that they are having a suit; and I was surprised when he called me up on the telephone about it.

XQ127. Did you know through Mr. Geyer who was to be
1854 examined in Washington? A. I knew Mr. Saadi was to be examined there.

XQ128. As a matter of fact Mr. Saadi was not to be examined there? A. He told me himself that he was going to be examined.

XQ129. Where? A. That he was in the case; Mr. Saadi was defendant in the suit. He showed me his papers where he had been stopped from selling pens.

XQ130. When did he do that? A. It was before last Christmas, away long back.

XQ131. And it is because of this conversation with Saadi, held before last Christmas, that you knew Mr. Watson was to

1855

be in Baltimore last Tuesday? A. I did not know anything of the kind. I told you that he called me up by phone that night, Monday night or whenever it was he was in town and then he told me that he was going to examine some witnesses there and he was going to examine some witnesses in Washington.

XQ132. After Wednesday whom did you see in New York connected with the L. E. Waterman Fountain Pen Company? A. Nobody but him.

XQ133. Did you see Mr. Watson on Thursday? A. I think I saw him Thursday night.

XQ134. Where? A. He came to the hotel there, a little while, and talked with Mr. Hildreth the proprietor.

XQ135. Does Mr. Watson live at the Breslin? A. No, sir, I don't think he does. 1856

XQ136. Did you have any talk with Mr. Watson or anybody connected with the L. E. Waterman Company yesterday? A. Yes.

XQ137. Who? A. Mr. Watson.

XQ138. Where? A. Around on Broadway at the Savarin restaurant.

XQ139. You took lunch with him? A. Yes.

XQ140. Where did you meet him—at his office? A. No.

XQ141. At the Savarin? A. Yes.

XQ142. Where did you go after lunch? A. I went home.

XQ143. To the Breslin? A. Yes.

XQ144. With Mr. Watson? A. No, sir. 1857

XQ145. How long did the lunch occupy? A. About half an hour.

XQ146. Did you talk to Mr. Watson in Baltimore last Monday night about the nature of the testimony you were going to give today? A. I never heard of it. I didn't know of it.

XQ147. Did you discuss with him the relative merits and the comparisons of the L. E. Waterman Fountain Pen at that time? A. No.

XQ148. When did you first discuss those things with him? A. I think it was Wednesday night he asked me some things about it.

1858

XQ149. You refused to tell him anything I understand about the Colonial Pen Company on Monday night when he first saw you; is that right? A. He asked me about the A. A. Waterman people. I never refused to tell him anything. He asked me to get some book that I did not have.

XQ150. Did you tell him all that he asked you about, regarding A. A. Waterman in Baltimore Monday night? A. I never told him anything.

XQ151. Did he ask you anything about them? A. He never brought up anything except this book.

XQ152. Did he bring up anything at the Breslin on Wednesday night? A. Nothing more than anybody would talk about

1859 the pen business.

XQ153. Did he bring up anything about A. A. Waterman & Co. or the Modern Pen Co. on Wednesday night? A. He said he would like it if I could find the book of the minutes of the Colonial Pen Company; that is all. We talked about the make of the pens. He asked me if I had trouble in getting rubber, and all that.

XQ154. When did he first ask you about the comparative merits of the L. E. Waterman pens and the A. A. Waterman pens? A. I think it was Thursday night.

XQ155. How long did you discuss that subject? A. Not very long.

XQ156. How long? A. We were a good while talking there

1860 in the lobby of the hotel, talking to Mr. Hildreth and it was quite late, I guess it must have been after eleven o'clock.

XQ157. How long did you talk there that night? A. I guess we talked two hours fully, more than two hours.

XQ158. Did you then tell him everything that he wanted to know about these pens? A. He asked me questions.

XQ159. And you answered all those questions? A. Yes.

XQ160. Did he also discuss those same things with you at the lunch yesterday? A. No, he did not speak about them at all yesterday.

XQ161. How did you happen to go to lunch yesterday? A. He asked me to meet him there. I don't know why.

1861

XQ162. You did not have any suspicion or idea? A. None whatever.

XQ163. You are in New York on business, are you not? A. Yes.

XQ164. They are purely business trips? A. Yes.

XQ165. Your time is occupied by your own personal business from the moment you get up virtually until the day is over? A. Yes.

XQ166. Where are your business activities in New York? A. Do you want me to tell you—

XQ167. What centers; where have you been? A. Thursday I was out at City Island, the northeast part of New York, up, out, around; and yesterday, Friday, I was looking at stores in New York.

1862

XQ168. Whereabouts? A. Fifth Avenue.

XQ169. What Street? A. 450 Fifth Avenue.

XQ170. That is around 40th Street? A. No, 38th or 39th Street, somewhere along there. It was the Mirror Candy Company had a store to rent.

XQ171. What time of day were you looking at those stores? A. From 2 o'clock until 5.

XQ172. What were you doing in the morning? A. I was down around Broad Street trying to find a broker, up to after 12 o'clock; then I went around to Mr. Geyer and got my repairs and I met him. He asked me to come there. I didn't know for what reason; nothing in my mind.

1863

XQ173. By "him" you mean Mr. Watson at lunch? A. Yes, I met him at lunch.

XQ174. When you were over at the Modern Pen Company yesterday morning did you tell Mr. Geyer or anybody that you had an appointment with Mr. Watson? A. I had not had it when I was there.

XQ175. When did you make your appointment? A. It was after 1 o'clock.

XQ176. When did you make your lunch appointment with Mr. Watson? A. The night before.

1864

XQ177. When you were over at the office of the defendant yesterday morning about those repairs did you tell Mr. Geyer or anybody that you had a lunch appointment with Mr. Watson? A. No, I didn't.

XQ178. Then you did not see Mr. Watson after that lunch until last night? A. Five o'clock.

XQ179. Five o'clock last night? A. Yes.

XQ180. Mr. Watson met you at your hotel? A. A few minutes. He served a summons on me.

XQ181. He served a subpoena? A. Yes.

XQ182. Were you very much surprised when he served a subpoena? A. Yes.

1865

XQ183. Shocked? A. I didn't expect it. I was just going home on the six o'clock train.

XQ184. Did you tell Mr. Watson when you were going away? A. I did the night before.

XQ185. Did you think that it was rather peculiar that Mr. Watson, knowing that you were to go to your family on the six o'clock train, should have served a subpoena on you after five o'clock last night?

Mr. Watson: Counsel for the plaintiff objects to the form of the question.

A. I thought it was rather peculiar. I didn't expect it. I hadn't the least idea of it. I was very much surprised.

1866

XQ186. Did you feel aggrieved by it? A. I certainly did.

XQ187. You felt that he had breached your confidence? A. I thought it was queer. I told him how I felt. If I could have found a way to somebody that I knew I would have gone to him. I wanted to find Mr. Geyer last night and I could not.

XQ188. What time was it this subpoena was served on you last night? A. About five o'clock.

XQ189. The Modern Pen Company, where Mr. Geyer has his headquarters, has a telephone? A. Yes.

XQ190. And you have used that phone? A. I was there last week at half past five and found them open and they told me then that they would not have been open when I got there at

half past five if they had not been taking account of stock as they closed at five o'clock.

XQ191. You did not think it would be very difficult to try and reach them on the phone, did you? A. I did not bring it to my mind to do that. I could not have seen him personally. I know I had my dinner right afterwards. He didn't stay very long. He shoved that into my hands and left me. That is all about it.

XQ192. Did you feel, when Mr. Watson served the subpoena, returnable this morning, after knowing that you wanted to return to your family and your business, that he had broken faith with you or had breached your confidence? A. It kind of made me feel pretty sad, if you want to know the facts about it. I don't know why I should be brought into this. You would not think this man was a friend of mine. 1868

XQ193. Did you feel this morning that he was not a friend of yours? A. I don't know how to feel. I am here to tell the truth in the least words I can use.

XQ194. Tell us in the least words that you can use whether when you came here this morning you felt friendly or unfriendly to Mr. Watson? A. Well, it is like this. This man beat me in my patent suit, four years—three or four years in the suit. He has asked me these questions and I told him two or three times, why should I answer these questions to him, because I make my living out of the Modern Pen Company; they are the only ones who can make my pens, as near right as I can get them. They are not perfect by any means but I make my living by them and I was very much surprised when he called me here into this suit—very much surprised. I know this, that these two representatives of these two companies are practically making use of the pens that I myself originated. Now I have come here and got into this; I had to tell what I knew and tell the truth. Now how am I going to resist? I know I will never get any goods made by this side (pointing to plaintiff's counsel) and if this side (pointing to defendant's counsel) goes against me how am I going to make a living. 1869

XQ195. How are you going to make a living? A. I don't know.

XQ196. Are you going to retire? A. No, I can't retire. I have got to have pens.

XQ197. You have got to have money to retire? A. Yes, and I have not tha

XQ198. Do you want us to understand that you have nothing today? A. Very much so.

XQ199. That is the fact? A. That is the fact.

XQ200. That you need not only this business but you have to have money to meet your living expenses? A. Yes.

XQ201. Are you very desperately hard up financially? A.
1871 I am.

XQ202. Today? A. Today.

XQ203. And have been? A. Yes.

XQ204. Will you kindly tell us whether your attitude towards Mr. Watson was friendly this morning when you came here? A. Yes, just the same as it would be to anybody.

XQ205. Just as friendly, although he had served you with a subpoena last night after getting your confidence and breaking it? A. Yes.

XQ206. When did you first know of a firm of A. A. Waterman & Company or "& Co."?

Mr. Watson: Objection is made to the question as not
1872 proper on cross-examination; it deals with new matter and the defendant makes the witness its own and is bound by the answers.

A. A. A. Waterman & Company or & Co.? What do you mean by & Co.?

XQ207. When did you first hear of a firm known as A. A. Waterman & Company or a firm known as A. A. Waterman & Co.? A. 1899 or 1900, somewhere around there.

XQ208. You did business with that firm? A. No.

XQ209. You acquired certain rights possessed by that firm, didn't you? A. Yes.

XQ210. When? A. March 27, 1903.

1873

XQ211. Have you given any thought to the testimony that you were to give this morning in this matter? A. None whatever.

XQ212. Have not refreshed your memory as to anything? A. No.

XQ213. Will you kindly tell us why it is that you can give us the exact dates of things taking place ten or more years ago and that it required at least several minutes for you to tell whether or not it was on Monday last that you saw Mr. Watson in Baltimore? A. I will tell you why I know it was on Monday last.

XQ214. Answer the question? A. This was so deep in my mind, and I kept on my diary when I purchased the company. I can remember that distinctly. 1874

XQ215. You kept a diary so that you would not forget the date? A. I do keep a diary.

XQ216. Did you enter it in the diary for fear you would forget the date? A. No, I always put down every day what I do.

XQ217. Did you put down in the diary about your talk with Mr. Watson in Baltimore on Monday? A. I think it is there, yes.

XQ218. Suppose you show it? A. I have not got the diary here.

XQ219. Where is the diary? A. In Baltimore.

XQ220. Then you do not enter up every night what you do during the day? A. When I get back I write up what happened, according to my memory. 1875

XQ221. Will you send that diary to the commissioner upon your return to Baltimore? A. Yes. There is nothing written in it since Wednesday. Monday and Tuesday were there.

XQ222. Is your Monday night interview with Mr. Watson in there? A. I think it is. I don't write interviews; I simply write who called on me and how much money I take in in a day and my daily expenses. That is all I put in the diary.

XQ223. How much money did Mr. Watson give you yesterday? A. He gave me $1.85.

XQ224. Anything else? A. Yes, he loaned me $10.

XQ225. Did he suggest the loan to you? A. No, I told him that this was so unexpected, that I was disappointed in my business transactions today and I was on my way home and he loaned me $10.

XQ226. Did you give him an I. O. U.? A. No, I will send that to him as soon as I get back. I asked him just the same as I would ask anybody. I don't know why I have to do all this.

XQ227. Did that loan mollify your feelings as to Mr. Watson? A. What do you mean—ease my mind?

XQ228. As to Mr. Watson and his friendly interest in you?
1877 A. Mr. Watson—I don't know whether he is my friend or not; but I could have gone to Mr. Hildreth and got that $10 just as well but I didn't want to do it.

XQ229. Didn't you think it would be much more appropriate to borrow the money from the manager of the hotel at which you were stopping than it is to borrow money from an attorney representing a plaintiff in an action against your employers, or a person with whom you do business constantly, in a matter then pending in which you were to testify? A. I have done the same thing with him.

XQ230. Will you answer my question? A. I never borrowed any money at the hotel but I gave them a check and that is all they would ask me for. I have no bank account, I couldn't
1878 give a check now.

XQ231. When did you discontinue your bank account? A. It is a good while now.

XQ232. How long? A. I couldn't tell you the exact date but it was way back last year. I have my book that would show.

XQ233. Have you borrowed any money at the hotel since you discontinued your bank account? A. Yes, but I have had to make it good before I left town. I never drew a check; I cannot draw a check if I don't have an account. If I said, "Let me have $10" they would hand me a check as they always did and put the name of my bank on.

1879

XQ234. You knew if you were to testify today in response to your subpoena that you would be within a five minutes walk of the office of the Modern Pen Company, didn't you? A. That didn't strike me at all. I didn't think of that. I thought for a minute where I was, what it was, and if he was friendly towards me and I asked him for the $10 and he said, "Certainly" and loaned it without any hesitation.

XQ235. You are selling pens of the Modern Pen Company? A. Yes.

XQ236. You are not selling pens of the L. E. Waterman Company? A. I have no pens, only a few, of the A. A. Waterman; just a few.

1880

XQ237. But you do business with them? A. Yes.

XQ238. You do no business with L. E. Waterman Company? A. None whatever.

XQ239. You knew Mr. Watson represented the L. E. Waterman Company; you know there was a litigation between the L. E. Waterman Company and the A. A. Waterman Company? A. Yes.

XQ240. And you knew Mr. Watson represented the L. E. Waterman Company in that litigation? A. Yes.

XQ241. And that they were seeking to take away the right of A. A. Waterman Company to the use of the name Waterman as applied to fountain pens, didn't you? A. I did.

XQ242. You knew that that was a vigorous fight? A. I didn't make any thought on the subject at all.

1881

XQ243. You did not consider that at all? A. I did not think of that at all.

XQ244. Do you sell the pens manufactured by the A. A. Waterman Company under that name? A. Yes, A. A. Waterman.

XQ245. And that was a pen that you were selling and out of which you were making some money? A. Yes.

XQ246. You knew if this litigation succeeded so far as the plaintiff was concerned the A. A. Waterman Company could not manufacture pens under that name? A. I did not think of that.

XQ247. Did you know it? A. I do know it now.

XQ248. When did you first learn it? A. Learn what—that they were in litigation?

XQ249. The purposes of this litigation? A. A long time ago. I did not bring the case or anything into the question. I just returned from being turned down for a bill for a lot of money and I had no money at the moment. He handed me this subpoena and my thought was to go home, pay my bill at the hotel here and I didn't think at the instant of the outcome. I said, "Mr. Watson, would you be willing to lend me $10," he didn't hesitate but he handed it to me. Then he gave me $1.85, or something, and he said, "You owe me $10." I said, "Yes, thank
1883 you."

XQ250. Where did he hand you the $10? A. Right in front of the president's office, right on the sofa there, at five o. a little after five.

XQ251. Knowing about this litigation for some months, this pending litigation, knowing that Mr. Watson represented the complainant in this action, didn't you think it rather unusual that he called upon you in Baltimore and up at the hotel? A. I certainly did, very unexpected.

XQ252. Did you connect or associate those visits with this litigation? A. I never thought of it when he came there. He asked me about something as to the A. A. Waterman Company in 1899. He asked me if he could ask me some questions.

1884 XQ253. What did you think he was driving at or spending his time upon when he called upon you?

> Mr. Watson: Counsel for plaintiff makes a formal objection on the record to all this line of testimony at such great length and directs the Court's attention to the evident attempt to pad the record here with matters that have no connection with the issues in this case; and I shall move to Court to strike out this testimony at final hearing as entirely irrelevant and immaterial, and that the costs of taking the same be taxed against the defendant?

A. I supposed it was the case that has been on the last year and this year, of the Waterman Pen Company against A. A. Waterman.

XQ254. This case in which you are now testifying? A. Yes.

XQ255. You knew that he was engaged in behalf of the complainant in this case against the people for whom you were working or whose pens you were selling? A. Yes.

XQ256. You told us that you knew that you could not buy any pens from the L. E. Waterman Company and that the only people who could make pens at all situable to you were the A. A. Waterman Company? A. Yes.

XQ257. You knew if this litigation was prosecuted successfully the A. A. Waterman Company could not sell you pens 1886
under that name? A. I knew I would be out all around.

XQ258. You knew that you would be out all around and that your business would be gone? A. Yes.

XQ259. Did you know that you were under no legal obligation to give Mr. Watson answers to his questions? A. I was not under any obligation to give him any story.

XQ260. And you knew that? A. Yes, sir.

XQ261. And yet you went ahead and discussed with him all these things you have testified this morning? A. Yes.

XQ262. And you told him everything you testified to this morning? A. He asked questions just as he asked them today about the rubber and the pens and all that.

XQ263. How long have you been selling pens of the A. A. 1887
Waterman Company? A. I sold them along in 1902 and since last April.

XQ264. Right down to this time? A. No, 1902 until 1903. I was burnt out in 1904; and since last April.

XQ265. From April, 1910, to April 1911? A. Yes. I guess I had some before that; I am not positive.

XQ266. You have to buy those pens on a strictly C. O. D. basis, don't you? A. Yes.

XQ267. And you have applied for credit to the A. A. Waterman Company people, have you not? A. Yes, I have.

XQ268. To Mr. Geyer? A. Yes, and to Mr. Chapman. They let me have the samples.

XQ269. And each of them refused to sell you except on a C. O. D. basis? A. Before that this other man, Mr. Martling, gave me samples.

XQ270. But they declined to sell you on credit, although you applied for it and they insisted that your transactions must be on a C. O. D. basis? A. Yes.

XQ271. And you felt aggrieved, didn't you? A. I naturally felt aggrieved. I had no hard feeling. I wanted some samples last Christmas for Christmas business. This is strictly business.

1889 XQ272. Have you ever personally turned any rubber? A. No.

XQ273. You have never made any gold pens personally? A. No.

XQ274. Are you familiar with the process of manufacturing and turning rubber? A. Yes.

XQ275. Who manufactures the different parts that go into the L. E. Waterman pen? A. The L. E. Waterman Company.

XQ276. How long has it been doing that? A. That I don't know.

XQ277. How do you know that it is doing that? A. Because I read about their factory.

XQ278. When did they complete their factory? A. Within a year or more, I guess.

1890 XQ279. Before that who were manufacturing for them? A. H. P. & E. Day, of Seymour, Connecticut.

XQ280. What part did Day manufacture? A. All the parts except the gold pens.

XQ281. Who manufactured the gold pens for them? A. Fairchild, and Mabie Todd.

XQ282. Up to a year ago the work done by L. E. Waterman Company was to assemble the parts manufactured by other people; is that correct? A. Yes.

XQ283. And put them on the market? A. Yes.

XQ284. Is Day still in business? A. I don't know; I have not been there since 1904.

XQ285. Is Fairchild still in business? A. Yes.

XQ286. You can buy gold pens from Fairchild, can't you? A. I have.

XQ287. Of the same kind that they manufactured for and sold to the L. E. Waterman Company? A. Yes.

XQ288. And Fairchild turned out a pretty good pen, didn't he? A. Yes.

XQ289. And Day turned out an excellent, first-class rubber holder? A. Certainly.

XQ290. Could anybody turn out goods superior to Day? A I don't think they could.

XQ291. His were the best goods of that kind in the market? 1892
A. Yes.

XQ292. And Fairchild's pens were the best kind on the market? A. Yes.

XQ293. Were you at all familiar with the process employed by Day and Fairchild in getting out their goods? A. I know how to have the pens made, so that I could adjust them. That is the principal part, to adjust them after they are finished. They are not done then by any means. That is not the manufacture, that is, the turning. Any young man or boy could do the turning, but the other part is to assemble them and put them together and test them.

XQ294. Then I understand the turning of rubber is not an art or industry requiring great skill? A. No.

XQ295. Any boy could do that and turn them out? A. Yes, 1893
pretty fair.

XQ296. And the real secret of the success of fountain pens depends on the adjustment of the parts? A. Yes and testing and grinding the points of the gold pens, and finishing.

XQ297. Who adjusts the parts, men or women? A. Men.

XQ298. What is the salary ordinarily given to an adjuster of parts? A. They run from $25 a week up.

XQ299. Up to where? A. $35, somewhere around there. I have known of men getting that.

XQ300. Are there many men who are skilled and capable of earning such salary? A. Very few of them.

1894

XQ301. Don't you know as a fact that the adjusters at the L. E. Waterman Company get a salary of $12 a week each? A. I do not know.

XQ302. Have you ever made inquiry? A. No.

XQ303. Have you ever made inquiries into the salaries of adjusters at all? A. Only of my own and at Boston. They got good salaries.

XQ304. When you go into a store to sell an A. A. Waterman & Co. pen, what do you say? A. I always said, "A. A. Waterman fountain pens," "A. A. Waterman pens."

XQ305. And if the buyer went to a jobber and wanted a pen made by A. A. Waterman & Co. what would he ask for?

1895

Mr. Watson: Objected to as impossible for the witness to answer.

XQ306. Are there jobbers in the fountain pen line? A. I don't find any except people like Charles Broadway Rouss.

XQ307. Does Charles Broadway Rouss handle all kinds of fountain pens, or do they specialize? A. They have a good many kinds of pens.

XQ308. L. E. Waterman pens? A. I never have seen them there.

XQ309. Do you know a jobber by the name of Hodgkins in Philadelphia? A. Yes. I don't know that he is a jobber. I know a stationer. He was one of my first customers.

1896

XQ310. Does he handle L. E. Waterman pens? A. I believe they have them.

XQ311. Does he handle A. A. Waterman pens? A. I don't know. I never could sell them any pens.

XQ312. When you were at Mr. Geyer's office yesterday, did you tell Mr. Geyer that Mr. Watson had been to see you? A. No, I told him that Wednesday, when I came here first.

XQ313. On Wednesday? A. That was Wednesday afternoon, I think.

XQ314. Did you tell him on Friday that Mr. Watson had seen you that Wednesday night, and on Thursday night? A. I told

Mr. Geyer that Mr. Watson was at my house and I was very much surprised to have him call. 1897

XQ315. Did you tell Mr. Geyer yesterday, Friday, that Mr. Watson had seen you Wednesday night after you had seen Geyer? A. No, I did not tell him.

XQ316. And you did not tell him that he had seen you on Thursday night and that you had had these various conferences? A. No.

XQ317. So Mr. Geyer was in ignorance of the talk with Mr. Watson on Wednesday night and Thursday night? A. I don't remember. I don't believe I told him anything at all. I did not talk with him much.

XQ318. Mr. Geyer was in charge of the office of the A. A. Waterman Company and the Modern Pen Company, was he not? A. Yes. 1898

XQ319. Did you feel that you owed him any duty to acquaint him with these facts? A. Yes, a great deal.

XQ320. And yet you did not have any opportunity to talk about it? A. I did not say anything to him about it.

XQ321. How long were you there yesterday? A. About ten minutes.

XQ322. What did you talk about? A. Various subjects.

XQ323. What were they? A. One was about a book. He wanted to know if I knew the date of the book. I did not know anything about it.

XQ324. Did that take you ten minutes? A. No. 1899

XQ325. What did you discuss in the remainder of the ten minutes? A. I was not ready to talk to him. I had plans made to talk to him later on, but I had not anything to tell him definitely, anything that would interest him. I had nothing to tell him yesterday.

XQ326. Didn't you think that these nightly conferences at your hotel with an attorney for his adversary—A. I didn't think any more of it. He lived right near there. I thought he paid me a social call at my house, he being in the city.

XQ327. I am speaking now of the conferences at the Hotel Breslin in New York? A. Nothing came up. He asked me about some questions that did not interest me in the least.

XQ328. Where does Mr. Watson live? A. He told me that he lived near the Breslin. He told me that in Baltimore. I didn't ask him where.

XQ329. The situation that now confronts you, as I understand from your testimony, is that you cannot do business with L. E. Waterman? A. I never did.

XQ330. That as a result of this testimony you cannot do business with A. A. Waterman & Co? A. It don't look so.

XQ331. That you have nothing financially to bank upon? A. No.

XQ332. That your business is taken away? A. It can be taken away.

1901

XQ333. It can be taken away by the A. A. Waterman Company refusing to furnish you goods? A. Yes.

XQ334. And that you had to borrow $10 of Mr. Watson to get back to Baltimore? A. Yes.

XQ335. Have you made any arrangement with Mr. Watson for any further borrowings in order to stay here today? A. No.

XQ336. Have you had any talk with anybody except Mr. Watson connected with L. E. Waterman & Co., or with the firm of Watson & Raymond in the last two weeks? A. No, sir, never in my life.

XQ337. Never in your life? A. No. You mean about this? I don't know as I ever talked with anybody in the L. E. Waterman Company. I would not know them if I saw them, except the bookkeeper who used to be with me.

1902

XQ338. How many people are there in the United States manufacturing fountain pens? A. About fifty.

XQ339. And you know the product of those fifty? Where do you want us to understand that the product of the A. A. Waterman Co. stands? A. Where do they stand?

XQ340. Yes. A. They stand way up close.

XQ341. Close to L. E. Waterman Company? A. Yes.

XQ342. Very much difference between them? A. Yes, there is a good deal of difference between the rubber and the gold

1903

pens. They don't seem to get it. Perhaps you might once in a while find a cracker jack pen.

XQ343. What do you think of the self-filling or automatic pen of the A. A. Waterman Company? A. I think it is a very fair pen.

XQ344. I am now referring to the automatic self-filler? A. Of the A. A. Waterman?

XQ345. Yes? A. It is a good pen.

XQ346. Has the L. E. Waterman Company any self-filling pen equaling it? A. I believe they are advertising a pen lately.

XQ347. Have they any self-filling device that equals the self-filling device employed by A. A. Waterman & Co.? A. I have not used the pen; I don't know.

1904

XQ348. Have you ever seen the device of the L. E. Waterman Company? A. No, not that they have now. I have seen an old one.

XQ349. How old? A. One that was made similar to my pen.

XQ350. How old? A. I think it must have been four years ago.

XQ351. How does that compare with the automatic self-filler employed by A. A. Waterman & Co.? A. A. A. Waterman is the best.

XQ252. Is the best? A. Yes.

XQ353. When did you last see any kind of pen, for purposes of criticism and examination, manufactured or sold by L. E. Waterman & Co.? A. I don't catch that.

1905

XQ354. When did you critically examine pens manufactured by L. E. Waterman & Company? A. In July, 1907.

XQ355. Not since then? A. I have not examined any other pens since.

XQ356. You have not examined any pens of the L. E. Waterman Company since July, 1907? A. Self-filler; I have not seen any. They have got a new pen I understand. I have not examined it.

XQ357. You are referring now to L. E. Waterman & Co. self-filler? A. That they made at that time.

1906

XQ358. I ask you when did you last critically examine any kind of pen made by L. E. Waterman? A. That is the time, July, 1907.

XQ359. And that applies to all kinds of pens made by the L. E. Waterman Company? A. No, it only applies to self-filling pens.

XQ360. When did you see any of the other kind? A. I come in contact with them daily and weekly, the other kind.

XQ362. But you do not come in contact with self-filling pens frequently? A. No.

XQ363. They don't sell so very well, do they? A. I have not seen them.

1907

XQ364. You do not see them in the stores? A. Yes, I have seen them, but I have never taken them up and examined them. I was not interested in them.

XQ365. In 1882, from then on, the L. E. Waterman Company pen was popularly known as the Waterman pen; is that so? A. Yes.

XQ366. And after the product manufactured by the A. A. Waterman Company, or its predecessors, became generally used, how was the L. E. Waterman pen usually described by dealers? A. They called it a Waterman pen.

XQ367. And how was the A. A. Waterman Company described? A. Always called A. A. Waterman, so far as I know. That is the way they distinguish.

1908

XQ368. What does the dealer call the Ideal pen these days? A. He would call it a Waterman Ideal Fountain Pen.

XQ369. Is that the name generally applied to Waterman's Ideal Fountain Pen? A. Yes.

XQ370. And does that apply also to the consumer and the public? A. Yes, the public I think are not as familiar with the Ideal. They always say Waterman pen.

XQ371. How many pens manufactured by A. A. Waterman & Co. do you suppose have been sold in the United States and distributed? A. I have not the least idea. A great many.

XQ372. What would be your best guess?

Mr. Watson: Objected to.

A. I don't know. I don't know their business.

XQ373. How many of them have you sold? A. I guess I have sold several thousand.

XQ374. In the last year? A. Yes.

XQ375. And how many in earlier years? A. Not so very many because we put "Colonial" or my name on the pens after he sold out in Boston.

XQ376. But among the fifty manufacturers of fountain pens in the United States, excluding L. E. Waterman & Co., you found that you could get the best results, judged from your expert and analytical standpoint, from the A. A. Waterman Company; is that correct? A. They could make better work than any others. The next to them was Weidlich & Co. of Cincinnati.

XQ377. Do you do much repairing work? A. Yes.

XQ378. And have for ten years past? A. Yes.

XQ379. Do you repair more L. E. Waterman fountain pens than A. A. Waterman & Co. fountain pens? A. No, it runs all along, different ones. I can't tell; I couldn't tell you exactly; a good many of every kind.

XQ380. Do the L. E. Waterman fountain pens and A. A. Waterman fountain pens run very close as to repairs, or the number of repairs that you do? A. I would say the L. E. Waterman pens are not so many repaired as others.

XQ381. And that applies during the period when you have handled A. A. Waterman & Co. pens and have not handled for sale L. E. Waterman pens? A. Yes.

XQ382. From whom does the L. E. Waterman Company buy its rubber? A. H. P. & E. Day, Seymour, Connecticut.

XQ383. Are they general rubber dealers? A. No, they are exclusive. They do not make for anybody outside I understand. I never could buy any.

XQ384. Was that because your credit was not as good with them as L. E. Waterman? A. It was not that; it was because the Waterman Company took all of it. Nobody could buy.

XQ385. Do you recall talking about Day and L. E. Waterman Company to Mr. Geyer the other day? A. I don't remember.

1912

XQ386. Was there any conversation between you two as to Day and the L. E. Waterman Company and their relations? A. I don't recall it.

XQ387. Do you recall having any talk with Mr. Geyer the other day regarding the relation of H. P. & E. Day and the L. E. Waterman Company? A. No.

XQ388. Do you recall stating to him that Waterman had gotten in so deep today, to H. P. & E. Day, that L. E. Waterman Company was virtually controlled now by H. P. & E. Day? A. I believe I did have a talk something like that. You know H. P. & E. Day made goods for me for a good many years and Waterman got in there with them and he took all

1913

that they could make and I have seen the day when they have had their rooms piled high with goods waiting for Waterman to take them and Day would remark "If Waterman don't make good pretty soon we will send for Lancaster."

XQ389. Did you ever hear of the American Hard Rubber Company? A. Yes.

XQ390. They are manufacturers of vulcanized rubber? A. Yes.

XQ391. What sort of goods do they turn out? A. I have had some pretty hard stuff from them, pretty hard stuff.

XQ392. What is the best quality they make? A. Number four grade, if you can get it.

XQ393. The Akron brand? A. Yes, made in Akron.

1914

XQ394. Have you ever used their Akron brand of vulcanized rubber? A. I don't remember.

XQ395. Do you know anything about the Akron brand of vulcanized rubber? A. I never heard it mentioned.

XQ396. In what way—state specifically, just how rubber employed by A. A. Waterman & Company is inferior to that employed by L. E. Waterman & Company? A. I can't tell you any more than it is brittle. It don't adhere like a piece of Day rubber.

XQ397. Adhere in what way? A. You can screw up a section of the Day rubber and cannot see it, it takes such a fine

hair line and it will adhere to itself and then it is easy to unscrew again. It is more elastic, Day's rubber, than any other make of rubber. That is what I have found.

XQ398. Will you tell us in just what way the L. E. Waterman pen is superior to the pen used by A. A. Waterman & Co., the gold pen? A. The gold pen?

XQ399. Yes? A. The gold is good but there are different grades of iridium, and grinding, that is the principal thing, and the expense. You can buy manufactured iridium. You cannot buy the Siberian iridium.

XQ400. What is the best quality of iridium? A. Siberian iridium.

1916

XQ401. What brand? A. There may be different grades of that. It is very expensive. It runs up to $200 an ounce some of it. It is hard to get.

XQ402. What kind of iridium do L. E. Waterman & Co use? A. They use that, because I know Fairchild buys the best.

XQ403. How do you know they use that? A. I only know what goods are in the Fairchild pens and Mr. Fairchild himself told me.

XQ404. Looking at a pen can you tell what kind of iridium is in it? A. I could not.

XQ405. The iridium on the pen point is so infinitesimal that the ordinary eye cannot see it? A. You cannot tell until you write with it.

1917

XQ406. I understand that the adjustment of the pen is work done by clerks getting, as you say, from $25 to $35 a week? A. I have known them to get that. Of course you can get young men that can assemble parts I suppose more reasonably than that but an expert gets a very good salary for adjusting pens.

XQ407. How old are these boys that you can get to do that? A. I should judge anywhere from seventeen to twenty, something like that, young men.

XQ408. Those boys would not have had "years of experience" would they? A. No, they get educated that way gradually and work up to be practical mechanics.

XQ409. But on your direct-examination you testified that it required "years of experience" in order to properly adjust pens? A. It would, yes.

XQ410. Which statement do you want finally on the record—that boys seventeen to twenty can do it or that it requires "years of experience"? A. You can learn them to do it, but a first class pen maker has been at it for years adjusting pens. Mr. Waterman—that was his business; he used to file and tinker and get a pen just so before he would let it go out; just the same as every pen has to be examined and adjusted and fitted on to the feed and it takes an expert to do that.

1919 XQ411. In your thirty odd years of experience for how long a time was L. E. Waterman Company known merely as assemblers and adjusters of pens?

Mr. Watson: Objected to as entirely immaterial to any issue in this case.

A. I don't know that. They received their parts the same as I received my parts and assembled them. I don't know how they did business. I was never in their place. I have always been manufacturing pens that way, getting the parts.

XQ412. If you can buy your rubber from Day and your pens from Fairchild you can adjust and assemble those pens so that they will be equal, in workmanship, in parts and in efficiency to the L. E. Waterman Ideal Pens or of any other pen made by the
1920 L. E. Waterman Company? A. If I have their feeds.

XQ413. Which do you consider the best feed in the market? A. I never gave that a thought. If my tongue feed was made right and properly that is the best feed.

XQ414. Is that the feed employed by L. E. Waterman & Company? A. No.

XQ415. Is it employed by A. A. Waterman? A. No.

XQ416. You testified before that you could take a pen made by A. A. Waterman & Co. and adjust it so that it would make a first class writing instrument? A. Yes.

XQ417. Then your main complaint or only complaint is in the adjustment of the pen? A. I think, the way I have been getting my pens, they received no attention at all.

XQ418. Are you speaking now of the pens imprinted A. A. Waterman & Co. or the pens made by that company for you under your own brand? A. I mean my own pens. I never can get them made as I want them.

XQ419. Your standard is very very high is it not? A. My standard?

XQ420. Your personal standard? A. How do you mean. The standard of my pen is very high.

XQ421. The standard that you demand is very high? A. Yes, very high. 1922

XQ422. You are an expert in that line? A. Yes.

XQ423. And you want to get a pen that is superior to anything that ever was manufactured? A. I cannot get that.

XQ424. But that is what you are after? A. That is what I am after.

XQ425. How many pens can an ordinary adjuster assemble and adjust per week? A. I have not given that a thought.

XQ426. Think about it now and answer us? A. A man ought to do four gross of pens a week.

XQ427. That is about a thousand a week? A. Four gross a week.

XQ428. Excuse me; six hundred a week? A. Yes.

XQ429. And that on a salary of about $25 a week? A. I don't know how they pay. Of course there is other work that these experts do besides assembling pens. That has always been a foreman's work, to assemble. 1923

XQ430. Will you give me the name of one assembler or adjuster of pens now receiving from anybody a salary of $25 a week? A. I don't know of anybody. I don't know the name.

XQ431. Where are they employed if you know? A. I don't know where they are. The last one I had was August Eberstein.

XQ432. When did you last have him? A. 1903.

XQ433. What did you pay him? A. I paid him $25 a week.

1924

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ434. You have no personal knowledge that the L. E. Waterman Company buy their gold pens from Fairchild have you? A. Only from what they tell me and what I see in the Fairchild factory.

RDQ435. When did you see any pens there that they said were for Waterman? A. It was a long time ago.

RDQ436. You have not seen any there for several years have you? A. No.

RDQ437. This talk that you had with Mr. Geyer when you were talking about the Day factory and the Waterman Company and saying that the Days controlled the Waterman Company, when did that conversation refer to, what date; when was it? A. I cannot remember the exact time. It must have been Wednesday afternoon I think.

1925

RDQ438. What was the time when you told Mr. Geyer that the Days controlled the Waterman Company; when did the Days control the Waterman Company? A. I didn't tell him the date.

RDQ439. When was it?

A. I don't remember. It is a long time ago.

RDQ440. A great many years ago, before 1901? A. Before that I guess. I cannot tell the exact date.

RDQ441. You do not know anything about the relations between Waterman and the Days, today, do you? A. Nothing whatever.

1926

RDQ442. And you have never known anything about the relations between the Waterman Company and the Days at any time except that the Waterman Company got their rubber from the Days at one time; that is all you know about it? A. Yes.

RDQ443. Do you know whether or not the Waterman Company have been making gold pens or not? A. I don't know anything about that.

RDQ444. You have not known anything about where the Waterman Company made their parts, for a number of years have you? A. No.

RDQ445. No personal knowledge of it? A. Not since 1897.

RDQ446. You do know about the quality of the rubber which is in the Waterman Ideal Fountain Pen, don't you? A. Yes, I can show it to you for twenty years back, the quality.

RDQ447. Has the quality been generally uniform, the same all the time? A. Yes.

RDQ448. And has it been of the same high grade that you have spoken of? A. Yes.

RDQ449. And when you spoke of the rubber in the pens marked A. A. Waterman & Co. you referred to the rubber in the pens that you found on the market? A. Yes.

RDQ450. Found on the market during the last four or five years? A. Yes.

RDQ451. While you were running your factory at Baltimore did you employ adjusters for your pens? A. I did that myself.

RDQ452. You did it yourself? A. Yes.

RDQ453. Do you still do it? A. Yes.

RDQ454. In selling fountain pens of different styles for the A. A. Waterman & Co. of New York; you have had their different styles of pens to sell? A. Yes.

RDQ455. You had the so-called automatic self-filler that they make? A. Yes, I sold a few.

RDQ456. You have had the middle joint pen that they make? A. Yes.

RDQ457. And you had the old style with the joint near the gold pen? A. Yes.

RDQ458. Which of these styles have you found to be the principal one in demand? A. The one with the joint near the pen.

RDQ459. Do you find in your experience that this pen with the joint near the gold pen is generally preferred? A. I do.

RDQ460. And for what reason have you found it has been preferred? A. It is more simple and it does not get out of order; there is nothing there to get out of order. It is a staple article.

RDQ461. And in your experience there are more of the pens with the joint near the gold pen sold than any other kind? A. Yes.

RDQ462. Is it your experience that there are more pens with the joint near the gold pen sold than all the other kinds put together? A. Yes, I think so.

RDQ463. Do you know whether the Waterman Ideal Fountain Pens are used by the United States Government or not?

Mr. Stein: Objected to as absolutely immaterial.

A. Yes.

1931 RDQ464. In what department are they used? A. All departments.

RDQ465. Do you know what the Government pays for those pens?

Same objections.

A. The full retail price.

RDQ466. Is that true of any other fountain pen that the Government buys so far as you know? A. As far as I know—I don't know.

RDQ467. Do you know whether or not the Government buys any other kind of fountain pen than Waterman's Ideal Fountain Pen? Do they use any other kind of pen? A. Yes, they use mine.

1932 RDQ468. Any other kind? A. That I don't know. I don't see any other.

RDQ469. In your experience with the pens marked A. A. Waterman & Co. which you have found on the market, have you found the feeding mechanism of this pen satisfactory? A. Pretty fair.

RDQ470. Is it as good or is it inferior or is it better than a Waterman Ideal Fountain Pen? A. No, sir, it is not.

RDQ471. It is not as good? A. No.

RDQ472. You have spoken in your cross-examination about the A. A. Waterman & Company fountain pens that have come to your attention and you said that you could adjust them. As

you find these pens on the market do they need further adjustment? A. Some of them do, a good many of them. We have lots of trouble with them.

RDQ473. And you testified as to the quality of the rubber in the A. A. Waterman Company fountain pen. Does not the quality of the rubber and the quality of the gold pen have a material part in making a good writing instrument? A. Yes, that is the principal thing.

RDQ474. Does the superior elasticity of the rubber in the Waterman Ideal Fountain Pen concerning which you have testified, have anything to do with making a better joint? A. It certainly has.

RDQ475. Does it improve the joint or otherwise? A. It 1934
improves it.

RDQ476. You referred in your cross-examination to the iridium of the gold pen. Can you show us the difference between a poor pen and a good pen from the iridium on the point? A. Yes, I can show you that.

RDQ477. Will you please show us? A. Just feel of that point (illustrating).

RDQ478. What pen is this that you show me? A. One of my pens. That has a fair finish. This has not got any ink in it but you can feel the writing. You can see how bad it needs a finish.

RDQ479. How do you go to work to make the finish on the pen that you say is defective? A. I take that pen and use a 1935
stone and I have some emery.

RDQ480. And do you do this with every individual pen that you adjust? A. I have to do that.

RDQ481. And every manufacturer that makes a first class instrument has to do the same does he not? A. Yes.

RDQ482. You say in your testimony that you have been selling pens marked A. A. Waterman & Co. Did I understand you to say you wanted to buy pens marked A. A. Waterman & Co.? A. That I wanted to buy them, yes.

1936

RDQ483. And you wanted them marked A. A. Waterman & Co.? A. No, I buy them that way after they are marked that way.

RDQ484. Do you want them marked that way? A. No, I want them in my own name.

RE-CROSS EXAMINATION by Mr. Stein:

RXQ485. Coming down to the two pens with which you just gave a demonstration; the first one which you called "My pen" is a rough finished pen, is it not? A. No, that is not rough finished. That is finished.

1937

RXQ486. Has ink in it? A. Yes.

RXQ487. And has been used for a long time? A. No, only a short time.

RXQ488. How long has it been used? A. It has been used a week here.

RXQ489. How long all told? A. That was a new pen St. Patrick's Day.

RXQ490. And you say that is a finished point? A. Yes.

RXQ491. It is a coarse point, is it not? A. It is half-stub.

RXQ492. It is coarse, a broad point? A. It is a half-stub.

RXQ493. The other one? A. That has not been finished yet.

RXQ494. The other pen that you were endeavoring to demonstrate with has a very fine point, has it not? A. Yes.

1938

RXQ495. Has never been used? A. No.

RXQ496. Has not been finished? A. Has not been finished.

The pens are taken out of the holders in the presence of the examiner and of counsel.

The pen referred to as "My pen," by the witness, and being the coarse half-stub pen and bearing the imprint "The Lancaster Government Pen No. 7," is offered in evidence and marked Defendant's Exhibit A of this date.

1939

The second pen referred to as the "fine pointed pen" described by the witness as unfinished and bearing the imprint "A. A. Waterman & Co., New York No. 7," is offered in evidence and marked Defendant's Exhibit B of this date.

Mr. Watson: Counsel for plaintiff protests against this action of defendant's counsel as the witness has protested against taking these pens from him.

The two pens Exhibits A and B are retained by defendant's counsel.

RXQ497. Did you have any talk with Mr. Watson or anybody else with reference to getting a line of L. E. Waterman pens? A. Never.

1940

RXQ498. So I understand that you have made no arrangement for a line of pens to be supplied to you by L. E. Waterman Company? A. No, sir, that is ridiculous.

RXQ499. Or by any other concern? A. No other concern.

RXQ500. The quality of the rubber in the L. E. Waterman pens I understand has been uniform for twenty years? A. As far as I see them, as they come to my observation, very uniform.

RXQ501. You cannot note any change in twenty years in the quality of the rubber? A. I have not noticed it.

RXQ502. How many middle joint fountain pens manufacturned by A. A. Waterman & Co. have you sold since April, 1910? A. I cannot tell just off-hand. I guess I have sold five or six gross.

1941

RXQ503. How many self-fillers manufactured by A. A. Waterman & Co. have you sold?

Mr. Watson: Objected to as entirely within the knowledge of the defendant.

A. I guess I have sold two or three gross of them.

RXQ504. How many thumb joint pens made by the A. A. Waterman Company? A. I have not had any of them except with my own name on them.

RXQ505. How many of those have you sold with your name on them? A. I guess I have sold 500 or 600.

RXQ506. Made by the A. A. Waterman Company for you? A. Not all by them, no.

RXQ507. How many of those were made by the A. A. Waterman & Co. for you? A. I guess there were not over 200, I don't believe.

RXQ508. How many of the middle thumb joint pens made by A. A. Waterman & Co., but not bearing its imprint, and bearing your own imprint have you sold since April, 1910? A. How many middle joints? I guess I have had a gross or so of them.

RXQ509. How many self-fillers made by A. A. Waterman & Co. and bearing your name have you sold since April, 1910?
1943 A. None whatever.

RXQ510. So I understand since 1910 you have sold five or six gross of middle joint pens made by A. A. Waterman & Co. bearing its name and two or three gross of self-filling pens made by them and bearing their name? A. I cannot tell exactly how many. I don't keep a memorandum in my head.

RXQ511. Are the figures that you have given us substantially correct? A. Pretty near. I am doing the best I can from memory.

RXQ512. According to those figures you have sold six or seven gross of middle joint pens and two or three gross of self-filling pens? A. No, six or seven gross would cover everything

RXQ513. Cover everything? A. I think it would. Mr.
1944 Geyer knows.

RXQ514. And two or three gross of self-fillers? A. No, that would cover everything.

RXQ515. And against which you have sold 500 or 600 thumb joint pens? A. No, I have not sold 500 or 600 thumb joints of their make. I have sold my own.

RXQ516. But all told you have sold, no matter by whom manufactured, 500 or 600 thumb joint pens in the last year? A. More than that a good deal.

RXQ517. How many? A. I couldn't tell you how many thumb joint pens I have sold. I have sold over 1,000 thumb joint pens in a year.

1945

RXQ518. Do you sell Fairchild's pens to the Government? A. I have always sold them.

RXQ519. Has the Fairchild that you have been selling the Government within the last year been a pen manufactured by A. A. Waterman & Co.? A. No.

RXQ520. Who manufactures that pen for you? A. Fairchild.

RXQ521. You still believe that the feeding mechanism of the L. E. Waterman pen is better than the feeding mechanism of the A. A. Waterman pen? A. I think so, yes.

RXQ522. But you believe the tongue feed is the best of all? A. If I could have it made my way.

1946

RXQ523. The tongue feed is only employed by the A. A. Waterman Company? A. Yes.

RXQ524. And is not employed by L. E. Waterman? A. Not made by L. E. Waterman.

By Mr. Watson:

RDQ525. As furnished to you by A. A. Waterman & Co., is the tongue feed perfectly satisfactory to you? A. No, it has not proved satisfactory.

RDQ526. Why not? A. It is not adjusted right.

The Witness: Defendant's Exhibit B of today is a fine needle point while Defendant's Exhibit A is a medium point.

RDQ527. Will you produce a medium point pen similar in size to Defendant's Exhibit B of this date? A. Yes (producing a pen).

1947

Mr. Watson: Plaintiff offers the pen produced by the witness in evidence and asks that it be marked Plaintiff's Exhibit 110.

Marked Plaintiff's Exhibit 110.

RDQ528. Has plaintiff's Exhibit 110 been smoothed and finished? A. No, sir.

Deposition closed.

WARREN N. LANCASTER.

Adjourned to Monday, April 10th, 1911, at 10 A. M.

1948

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

vs.

MODERN PEN COMPANY,
Defendant.

1949

Met pursuant to adjournment at the office of Watson & Raymond, 10 Wall Street, New York, April 10, 1911, at 10 o'clock in the forenoon.

Appearances:

Samuel S. Watson, for Complainant.
Alexander S. Bacon, for Defendant.

WALTER B. RAYMOND, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Watson:

1950

Q1. Please state your name, place of residence and occupation? A. Walter B. Raymond, 106 Taylor Street, Brooklyn, New York; lawyer.

Q2. You are one of the attorneys for the plaintiff herein? A. I am.

Q3. And you have been such since this action was started? A. I have.

Q4. Have you made any trips around the country securing evidence for use in this action? A. I have.

Q5. Please state where you have been and what you have found that you consider material to this case? A. I made a trip

1951

in December, 1910. On that trip I went to Delaware, Ohio; Richmond, Ind.; Newcastle, Ind.; Kokomo, Ind.; Peru, Ind.; Huntington, Ind.; Fort Wayne, Ind.; Elkhart, Ind.; Allegan, Mich.; Holland, Mich., and Grand Rapids, Mich.

Q6. What did you find in Delaware, Ohio, material to this action, or in any other of the places mentioned? A. In Delaware, Ohio, I found the firm of Wells & Hardin who were selling the A. A. Waterman & Co. pens as Waterman pens.

Mr. Bacon: Objected to as immaterial and highly improper, to attempt to cumber the record with evidence of this character. The best evidence will be the evidence of the firm itself.

1952

A. (Continued.) I arranged there to take the deposition of Sells Bros., which was taken. In Grand Rapids, Mich., I visited the drug store of Muir & Co. and asked the clerk at the counter what kind of fountain pens they carried.

Mr. Bacon: The same objections.

A. (Continued.) He said they carried Waterman pens. I asked to see the pens that he carried and he took me to the back of the store where there was a large case full of pens. The young man who waited on me showed me a pen which I recognized as a pen marked A. A. Waterman & Co., New York. I asked him whether this was a genuine Waterman pen; he said that it was. I had a magazine with me, a Christmas magazine, and I asked him whether that was the Waterman pen that was advertised in all the Christmas magazines, showing the large display ad of L. E. Waterman Company. He said that it was. He then began to show me how the pen worked. The manager of the store came over and said that he would show me how it worked as I seemed to be handling it rather awkwardly. I asked him the same question that I asked the young man, whether this was a genuine Waterman pen, the pen that was advertised in the Christmas magazines. He said that it was and I said I would purchase the pen. The manager then left for the front part of the store. I asked the young man whether

1953

the pen was guaranteed. He said the pen was guaranteed. I asked him to give me a slip, sales slip, stating that I had purchased the pen so that I could exchange it if it proved unsatisfactory. He wrote out the sales slip, which I have here (producing paper).

Q7. Have you the pen which you purchased at that store? A. I have and the sales slip.

Q8. Is the box which you produce the box in which you purchased the pen that was delivered to you? A. It is.

The pen and box produced by the witness are offered in evidence and marked Plaintiff's Exhibit 111.

1955 Mr. Bacon: Objected to as incompetent, irrelevant and immaterial and I move to strike out all this evidence of conversations with unnamed parties as in no way connected with the defendant.

The sales slip produced by the witness is offered in evidence and marked Plaintiff's Exhibit 112.

Same objections.

A. (Continued.) The young man who sold me the pen said that his name was Muir and he was the son of the proprietor of the store. His initials are on the sales slip. I then walked to the front of the store and saw the manager and asked him whether he thought I could buy any pens at wholesale under the name of Waterman and he said that he thought that I could.

1956 I said, "Where does this concern do business?" And he said "22 Thames Street, New York." He asked me whether I was in business. I told him I was in a similar line. I then asked him whether he would be willing to go on the witness stand and swear that that was a genuine Waterman pen. He said that he would. I then took a card out of my pocket, a business card, and gave it to him and told who I was, that I was attorney for the L. E. Waterman Company. He then said, "I sold that pen to you as an A. A. Waterman pen." I replied that that was the first that I had heard of the initials A. A., that he had sold the pen to me as a genuine Waterman pen, the kind that was advertised in all the magazines. He said, "That is

not so. I sold that pen to you as an A. A. Waterman pen." I then said, "It is fortunate for me that I have a receipt to show the way in which that pen was sold to me." He said, "You have not any receipt." I showed him the receipt and he tried to grab it from me and told me I could not go out of the store with that receipt. I replied I thought he had somewhat of a contract on his hands. I asked to see Mr. Muir. This gentleman said that Mr. Muir was absent from the city, that he would refer the matter to his attorney and that A. A. Waterman & Co. would protect them in any suit that might be brought. That is the first that any "suit" was mentioned, and I did not mention it.

1958

Q9. What was your next experience? A. I came home soon after that. I left again for the West some time in the early part of January, 1911. On January 16th, 1911, I was in Springfield, Ill. I visited a drug store there kept by a man named George W. Cobb. I found that he had a dozen and a half A. A. Waterman & Co., New York, pens. Mr. Cobb tried to sell me one of these pens as a genuine Waterman pen. I gave him my card and explained to him that this was not a pen made by the L. E. Waterman Company, but a pen made by A. A. Waterman & Co., New York. He said that was the first that he had ever known of any distinction between the two concerns.

1959

Mr. Bacon: All this testimony is objected to on the ground that it is immaterial and not connected with the defendant and is pure hearsay.

Q10. What other experience did you have? A. On January 17th, 1911, I was in St. Louis, and visited E. C. Simmons Hardware Company. I asked them whether they had any fountain pens. They said yes "The best pen in the world." I asked them what pens they had and he said Waterman pens. This conversation was had with a man—I believe his name was Johnson, the city salesman, located at the door. He telephoned to the stock room and asked them to send down some Waterman pens. The pens came down and they were pens marked A. A. Water-

man & Co., New York. I asked him whether these were genuine Waterman pens that were advertised in all the magazines. He replied that they were. I then gave him my card and showed him the fountain pens in my pocket which were Waterman Ideal fountain pens. I asked him whether he had ever seen pens marked the way the pens in my pocket were marked. He replied that he thought that they were the same pens that they were carrying in stock. I explained the difference to him and left without buying any pen.

Q11. What was your next experience? A. I was in St. Louis on the 18th of January, 1911. I called at Butler Bros., a big
1961 catalogue house, and asked to see fountain pens. I was put in charge of a city salesman who took me up to the department where these pens were kept. They showed me a great number of pens marked A. A. Waterman & Co., New York. I asked them whether these were genuine Waterman pens. He said, "Yes, these are genuine Waterman pens." I said, "You are sure about that, because a friend of mine once bought a pen that was called a Waterman pen and did not prove to be a genuine Waterman pen." He said, "These are genuine Waterman pens. Our house deals in nothing but genuine goods and you can read from our catalogue what these pens are." He showed me a catalogue and the catalogue said, "Waterman pens," no initials were given in the catalogue. I then proceeded to give him an order. I gave him an order for two dozen pens but when he wrote out the
1962 order the pen was designated by number and not by name, so I left, telling him I would see him later. I came back and saw the manager of Butler Bros., of St. Louis, who was a man named Littledale. I handed Mr. Littledale my card and told him who I represented and he said he had had enough bother over this fountain pen business, that he would buy fountain pens from whom he chose and it didn't make any difference whether they were manufactured in New York or Chicago, they were Waterman pens just the same and he intended to sell them as such. I then explained to him that he did not know what he was talking about, that I represented L. E. Waterman Company. He said, "Don't you come from New York?" I said, "Yes." He

said, "I am sick and tired of this business, I will buy pens from whom I choose." I told him I did not have anything to do with that and he brought out a lot of correspondence that had taken place in a squabble between A. A. Waterman & Company, New York, and A. A. Waterman & Company, Chicago. I then explained to him that I represented the L. E. Waterman Company. He asked me what the difference was and I told him. He told me that he always believed they were selling genuine Waterman pens and had some listed in their catalogue as Waterman pens and no one ever explained to him that there was an L. E. Waterman Company, which was the first and original user of the name Waterman.

Q12. What was your next experience? A. Also in St. Louis. 1964
I called on Blackwell & Wielandy. I asked them what kind of fountain pens they had and among a great variety of other makes was Waterman. I asked to see the Waterman pens. They showed me a pen marked A. A. Waterman & Co., New York. I asked them also whether this was the genuine Waterman pen that was advertised in all the magazines. They said that it was. I said, "Is this the original Waterman Pen?" They said that it was. I started to give them an order for two dozen pens and found that they also sold pens only by their catalogue numbers so I did not conclude the order. I saw a gentleman there who was the head of the merchandising department; the name I cannot recall at the moment but he introduced me to Mr. Wielandy.
I forgot to state, in the Butler Bros. case they called the sales- 1965
man in and the salesman stated that he had always sold these pens as genuine Waterman pens to customers, that he did not know of any distinction between A. A. Waterman & Co., New York, and L. E. Waterman Company.

Mr. Wielandy knew that there was an A. A. Waterman Company, New York, and an A. A. Waterman Company, Chicago, and an L. E. Waterman Company. He took up the matter with a number of his clerks and found that they did not know the distinction but had been selling A. A. Waterman Company, New York, pens as genuine Waterman pens and issued an order that

the pens should in the future be sold only as A. A. Waterman & Co., New York, pens.

Q13. What was your next experience? A. I then went to a man named Louis Hollender, 802 Olive Street, St. Louis. Mr. Hollender runs a combination jewelry and fountain pen shop. I asked him what kind of fountain pens he had. He said Waterman pens. I asked him whether they were the genuine Waterman pens advertised in all the magazines and he said they were. The pens he showed me were marked A. A. Waterman & Co., New York.

Q14. What was your next experience? A. I went to Memphis, Tenn. I there visited the store of F. B. Thayer, a jeweler, 1967 and was waited on by Mr. Thayer, personally. I asked him what kind of fountain pens he had and he said Waterman pens and he showed me a tray of pens marked A. A. Waterman & Co., New York. I asked him whether they were the genuine Waterman pens and he said, "There is only one Waterman pen and this is it." I asked him whether he had ever heard of any other Waterman pens and he said no. I said, "Are you sure this is the genuine Waterman pen?" and he said, "Yes. This is the only Waterman pen that there is on the market." I bought a pen, which I have here, together with the box in which it was sold to me. I asked him for a written receipt for the pen, which he gave me. I produced the box, pen and receipt.

1968 The box and pen produced by the witness are offered in evidence and marked Plaintiff's Exhibit No. 113.

Same objections.

The slip is offered in evidence and marked Plaintiff's Exhibit No. 114.

Same objections.

Q15. What was your next experience?

Same objections.

A. I went to New Orleans. While in New Orleans I called on Haussmann & Son, jewelers, and was waited on by a Mr. Haussmann. He said he was the son of the head of the firm. I

asked him whether he had any fountain pens. He said that he had, Waterman pens. He produced a number of pens marked A. A. Waterman & Co., New York. He explained to me how the pens worked and I asked him whether this was the genuine Waterman pen that I saw advertised in all the magazines. He said that it was and that the Waterman Company was one of the largest advertisers in the world. I asked him whether there was any other Waterman Company and he said that he had never heard of any other Waterman concern. I showed him the magazine that I had with me with the advertisement of the L. E. Waterman Company in it and explained to him the distinction between L. E. Waterman Company and A. A. Waterman & Co. and left. 1970

Q16. What was your next experience?

Same objections.

A. My next experience was in Hattiesburg, Miss., on January 3, 1911, where I visited the Corner Drug Store. I asked for fountain pens. They said they had fountain pens. I asked them what kind. They said Waterman pens. I asked to see them and he took a half a dozen pens marked A. A. Waterman & Co., New York, from a safe. I asked whether these were genuine Waterman pens and he replied they were. I asked him whether these were the pens that were advertised in all the magazines and he said they were. I asked him whether there was any other Waterman pen and he said no. I did not buy a pen 1971 but left the store.

Q17. Did you find the name of the one with whom you had the conversation? A. Yes, the proprietor of the store. His name is Meis I think, or some such name as that.

Q18. What was your next experience? A. My next experience was in Meridian, Miss., on the 23rd of January, 1911, at a book store kept by a man named Fort. Mr. Fort waited on me. I asked him whether he had any fountain pens and he said he had. I asked him what kind and he said Waterman pens. I asked him whether these were the pens that were advertised in all the magazines and he replied that they were. I asked him

whether there was any other Waterman in the business and he said no. I left the store without buying a pen.

Q19. Did you explain to him the difference? A. No, I do not believe I did, in that store. I haven't it so marked here. As I recollect the man he was an elderly man. He said he had been handling these pens for a number of years.

Q20. What was your next experience? A. In the same place, Meridian, a man named Sugarman who kept a cigar store. He had a fountain pen case there. I asked him what kind of pens he carried and he said Waterman pens. I asked him whether these were genuine Waterman pens and he said they were. I asked him whether these were the pens that were advertised in
1973 all the magazines and he said that they were. So I proceeded to purchase a pen. I asked him for a receipt. When I looked at the receipt that he was going to give me it said, "One A. A. Waterman pen." I asked him what those initials meant and he said it was the initials of the Waterman. I said I thought this was a genuine Waterman pen. He said, "It is. This is a variety of it." Mr. Sugarman was a Hebrew and he immediately said, "What are you up to?" I explained to him the difference between the L. E. Waterman Company and A. A. Waterman & Co. and left the store without purchasing a pen.

Q21. What was your next experience? A. My next experience was in Birmingham on the 24th of January, 1911, at the Pope-Patten Drug Company where I saw Mr. Patten. I asked
1974 him whether he kept any fountain pens. He said that he did. I asked him what kind and he said Watermans. I asked him whether this was a genuine Waterman pen; he said it was. I asked him whether this was the pen that was advertised in all the magazines and he said that it was and I bought a pen from him. I got a receipt for it "One Waterman pen." I told him who I was and whom I represented and Mr. Patten asked me whether I would not give him the receipt back and let him take the pen back as he was under a total misapprehension as to there being any other concern named Waterman and he did not want to have me have the pen and the receipt. I talked with him a while and finally gave him the pen and the receipt back.

1975

Q22. What was your next experience? A. A. In Chattanooga, Tenn., in a cigar store corner of Ninth and Market. The store was kept by a man named Klem and in it was a fountain pen man occupying a window and selling fountain pens. I have a picture of that store and the window producing photograph). This man had a sign in the window which said, "Drummers' samples. A. A. Waterman and the Globe Fountain Pens $1."

Q23. Did you find any pens in this man Klem's display marked with the Globe trade-mark of the L. E. Waterman Company? A. I did. I asked him what kind of fountain pens he had and he said Waterman.

1976

Q24. Did he show you, in answer to your inquiry for a Waterman pen, a pen marked with the Globe? A. He did. He also showed me pens marked A. A. Waterman & Co., New York. I asked him whether these were the genuine Waterman pens and he said they were. I asked him whether these were the pens that were advertised so extensively in all the magazines and he said they were. I picked out a pen and asked him for a receipt and he tried to give me a receipt for an A. A. Waterman & Co. pen. I asked him what these initials meant and he said that was the kind of Waterman pen that that was. I asked him whether that was the only Waterman pen that there was and he said no, that there was a man named A. A. Waterman who was a brother of L. E. Waterman; that L. E. Waterman and A. A. Waterman had been in business in partnership together and had a fight over making self-filling pens and A. A. Waterman was now making pens under the name of A. A. Waterman & Co.

1977

Q25. What was your next experience? A. In Birmingham, I visited the store of I. R. Rubenstein. I asked Mr. Rubenstein, who waited on me, personally, what kind of pens he had and he said Waterman pens. He showed me a number of pens marked A. A. Waterman & Company, New York. I asked him whether these were genuine Waterman pens and he said they were. I asked him whether these were the pens that were advertised in all the magazines and he said that they were. I then asked him where these pens came from and he said New York.

1978 *Walter B. Raymond*

I asked him whether this was the only Waterman that there was in the business and he said that it was the only one that he knew and the only one that he handled. I picked out a pen and asked him for a receipt for it and he would not give me a receipt for the pen so I did not purchase the pen.

Q26. What was your next experience?

Same objections.

A. In Chattanooga on the 30th of January, 1911. I visited the store of R. J. Miller, a druggist, and asked him whether he had any fountain pens. He said that he had. I asked him what kind and he said Waterman pens. He showed me a number of
1979 pens marked A. A. Waterman & Co., New York. I asked him whether these were the genuine Waterman pens and he said they were. I asked him whether these were the pens that were advertised in all the magazines and he said that they were. I then asked him whether there was any other Waterman in business and he said no. I then told Mr. Miller who I was and did not purchase a pen from him. Mr. Miller said that he had never heard of any other Waterman concern before that time.

Q27. Did he tell you at any time during the conversation that the pens that he was selling were made by the concern whose advertisement you called his attention to? A. Yes.

Q28. Did you show him the advertisement? A. Yes, I always carried a magazine with me with the advertisement in.

1980 Q29. The advertisement of the L. E. Waterman Company? A. The L. E. Waterman Company?

Q30. In these popular magazines that you have referred to was there any advertisement of A. A. Waterman & Co. pens? A. No, sir.

Q31. What was your next experience? A. In Nashville, Tenn., on the 3rd day of February, 1911. I called at the store of Jensen, Herzer & Jeck, jewelers. I asked them whether they had any fountain pens. They said they had. I asked them what kind and among other makes they mentioned Waterman. I said I wanted a Waterman pen. Mr. Jensen waited on me. He showed me a number of pens marked A. A. Waterman & Co.,

1981

New York. I asked him whether these were the genuine Waterman pens and he said they were. I also asked him whether these were the pens that were advertised in all the magazines and he said they were. I said, "I want to make sure that I am getting a genuine Waterman pen because a friend of mine got stuck some time ago." He said they would never get stuck in his store, this was a genuine Waterman pen. So I selected a pen and bought it. I asked for a receipt for the pen so if I ever came back again and the pen was not satisfactory I would have something to show that I purchased it and he called over a man who was in a little cashier's booth and said, "Mr. Jeck, please make out a receipt for one Waterman self-filling fountain pen $2." The receipt was made out and given to me and I put the pen in the box, which I now produce, together with the pen and the receipt.

1982

The pen and box are offered in evidence and marked Plaintiff's Exhibit 115.

Same objections.

The receipt produced by the witness is offered in evidence and marked Plaintiff's Exhibit 116.

Same objections.

A. (Continued) This occurred at about possibly 11 or 12 o'clock in the morning. I went back to this store about 5 o'clock and saw Mr. Herzer. I told him that I had bought the pen, which I showed him, in the morning; I had gone down to another dealer some few doors below to have it filled and I told the dealer that I had a Waterman pen, the same kind that he was handling and the dealer informed me that the pen was not a genuine Waterman pen. I asked him what he had to say about it. He called Mr. Jensen and Mr. Jensen showed me the name on the barrel and said, "This is a Waterman pen, the only Waterman pen there is on the market, a genuine Waterman pen," and Mr. Jeck came over and joined in the conversation and the four of us had quite an argument whether this was a genuine Waterman pen or not. I maintained that it was not and the three of them claimed that it was, that they had sold them for years and

1983

knew what they were doing; it was a genuine Waterman pen. So after they had become quite heated in the discussion I asked them whether they would be willing to go on the stand and swear to what they had told me. They said that they would. So I produced a card and told them who I was. They immediately switched around and said they had sold that pen to me as an A. A. Waterman pen. The result of it was that I missed my train while they were trying to explain this matter away.

Q32. What was your next experience?

Same objections.

A. My next experience was at 306 Superior West Street in
1985 Cleveland, Ohio, on the 10th day of February, 1911. There was a store there devoted largely to fountain pens. It is run by a man named J. Basheim in a cigar store. It had a big sign over it "Hexter Cigar Company." I saw a young lady in there, who waited on me. I asked her for fountain pens in there and asked her what kind she had and among other kinds she said Waterman. I said I wanted a genuine Waterman pen and she brought out one of the pens marked A. A. Waterman & Co., New York. I asked her whether this was a genuine Waterman pen and she said it was. I asked her whether this was the pen that was advertised in all the magazines and she said it was. I selected a pen and asked her for a receipt for it when she became very excited and said that she knew who I was that I was the one that got
1986 the Standard Drug people in trouble the year before and she would not give me any receipt. I then went up to the other store, I think it was 24 Public Square West, Cleveland. At any rate I have a photograph of the store, run by the same man. I took a picture of the window of the store. The first picture shows the store and the second picture shows the window.

The first picture produced by the witness is introduced in evidence and marked Plaintiff's Exhibit No. 117.

Mr. Bacon: Objected to as incompetent, irrelevant and immaterial, no proof of its being a correct picture and not connected in any way with the defendant.

1987

Q33. Is the picture produced and marked Plaintiff's Exhibit 117 a fair representation of the store? A. It is; I took the picture myself and developed it and printed it.

Q34. The second picture which you have produced, is that a fair representation of the window of the store? A. It is. I took the picture myself and developed it and printed it.

The second picture produced by the witness is offered in evidence and marked Plaintiff's Exhibit 118.

Same objections.

Q35. Continue your answer? A. I went into this store in Public Square West and asked them what kind of pens they had and they said Waterman pens, among other pens, and I asked to 1988
see a Waterman pen and the young lady showed me a pen marked A. A. Waterman & Co., New York. I asked her whether this was a genuine Waterman pen. She said that it was; and I asked her whether this was the pen that was advertised in all the magazines and she said that it was. I selected a pen and asked her for a receipt for it. She said, "I know who you are now. You are the man who was down at the Superior Street store," and she would not give me a receipt for the pen.

Q36. What was your next experience? A. In the Standard Drug Company, Euclid Avenue store, Cleveland, Ohio.

Q37. When was that? A. That was on the same day, the 10th day of February, 1911.

Q38. Please state what experience you had there? A. I 1989
went in the store from the arcade and went to the pen counter and asked what kind of pens they had and they gave a long list of pens and finally said "Waterman pens." I said that I wanted to buy a Waterman pen. The young lady who waited on me whose name was Block showed me a number of pens marked A. A. Waterman & Co., New York. I asked her whether this was a genuine Waterman pen. She said that it was and I purchased the pen and asked her for a receipt for the same. She made out a receipt, "One Wat. S. F. $2.50." The pen and the receipt are in evidence in the suit of the L. E. Waterman Com-

1990 *Walter B. Raymond*

pany against the Standard Drug Company in the United States Circuit Court clerk's office, Cleveland, Ohio.

Q39. What other experience have you had if any? A. I went to Buffalo on the 11th day of February, 1911. I went into a jewelry store kept by Simon Cohen on Main Street and asked him what kind of pens he had. He said he had Waterman pens. He showed me a number of pens marked A. A. Waterman & Co., New York. I asked him whether this was a genuine Waterman pen and he said that it was. I asked whether this was the pen that was advertised in all the magazines and he said that it was. I selected a pen and asked him whether he had ever heard of any other concern doing business under the name of Water-
1991 man. He said there was an L. E. Waterman pen but this was just as much a Waterman pen as the L. E. Waterman pen and that they were brothers, had formerly been in business together and were now doing business separately.

Q40. What was your next experience? A. I then went into the dry goods house of Adam, Meldrum & Anderson, Buffalo, N. Y., and asked them what kind of pens they had. They said they had Waterman's. I asked them whether this was a genuine Waterman pen. The young lady who waited on me said that it was. I asked her whether this was the Waterman pen that was advertised in all the magazines. She said that it was. I said to her, "Now you are sure this is a genuine Waterman pen because if it is not I am going to bring it back." She said, "This
1992 is a genuine Waterman pen." I said, "All right. Give me a sales slip." I purchased the pen; and the pen and the box and the sales slip I now produce.

The pen and box produced by the witness are offered in evidence and marked Plaintiff's Exhibit No. 119.

Same objections.

The slip is offered in evidence and marked Plaintiff's Exhibit 120.

Same objections.

Q41. What was your next experience? A. My next experience was in Mattoon, Ill., on the 6th of March, 1911, where I

visited what is known as the Mattoon News Company, located in the postoffice lobby and run by a man named J. J. Smith. I asked what kind of fountain pens they had. They said Waterman. He showed me a number of pens marked A. A. Waterman & Co., New York. I asked whether this was the genuine Waterman pen that was advertised in all the magazines. They said that it was. I asked whether he had ever heard of any other Waterman Company and he said no that was the only one that there was in the business. 1993

Q42. What was your next experience? A. I went to the store of L. B. Patheal a very small jewelry store.

Q43. In what town? A. Mattoon, Ill. I asked what kind of fountain pens he had. Among other pens he said he had Waterman pens. He showed me a few pens marked A. A. Waterman & Co., New York. I asked him whether this was a genuine Waterman and he said it was. I asked him whether this was the pen that was advertised in all the magazines and he said that it was. I asked him where he bought these pens and he said he bought them of Otto Young, Chicago. 1994

Q44. What was your next experience? A. I then went into a store kept by a man named Welch, a pawn broker. I asked him what kind of pens he had. He said he had Waterman pens and he showed me a number of pens marked A. A. Waterman & Co., New York. I asked him whether this was a genuine Waterman pen. He said that it was. I asked him whether this was the pen that was advertised in all the magazines and he said that it was. I asked him whether he had ever heard of any other concern doing business under the name of Waterman and he said yes, that A. A. Waterman was a brother of a man named L. E. Waterman, that they had had a quarrel about making self-filling pens; that A. A. Waterman was now making a pen which he was selling. 1995

Q45. What was your next experience? A. I then went into Owing's drug store, in Mattoon, Ill., and I was waited on by Mr. Owing. I asked him what kind of pens he had. He had a great variety of pens; among others he said he had Waterman pens. I asked to see a Waterman pen and he showed me a pen marked

A. A. Waterman & Co., New York. I asked him whether this was a genuine Waterman and he said yes. I asked him whether this was the pen that was advertised in all the magazines. He said he did not know, that he had been trying to find out from the salesman who went through there but he was unable to find out from him whether this was the same concern that was doing all the advertising or not.

Q46. Now what was your next experience? A. I then went to Shelbyville, Ill., and I called on a man named Homrighous who kept a jewelry store there. I asked Mr. Homrighous what kind of pens he had. He said he had some Laughlin pens and some pens that he thought were some kind of Waterman pens.
1997 I questioned him about these Waterman pens and he showed me one or two broken pens and one pen in good condition marked A. A. Waterman & Co., New York. He said that he had bought these A. A. Waterman & Co., New York, pens under the belief that they were L. E. Waterman Company pens; some salesman had told him that they were not the genuine Waterman Ideal pens and he was discontinuing the sale of them. I think he said the salesman was a Laughlin salesman.

Q47. What other experience have you had? A. On March 7th, 1911, I went to Decatur, Ill., and called on a man named Williams, an optician, and asked him what kind of pens he had and he said he had Waterman. He showed me pens marked A. A. Waterman & Co., New York. I asked him whether this
1998 was a genuine Waterman pen and he said that it was. I asked him whether this was the pen that was advertised in all the magazines and he said that it was. I asked him whether there was any other concern named Waterman that he had ever heard of and he said there was. He said that he came from New York, and was formerly employed by L. L. Ferguson an optician, 155 Broadway. When he was there there was a concern called L. E. Waterman Company that had a small store on Broadway; that A. A. Waterman Company had a big place at the corner of Cortlandt Street and Broadway. He told me that A. A. Waterman & Co. were the original Waterman fountain pen concern.

1999

Q48. What was your next experience? A. At Detroit, March 17, 1911. I called on Crowley, Milner & Co. I asked them what kind of pens they had. They said Waterman. They showed me a number of pens marked A. A. Waterman & Co., New York. I asked them whether this was a genuine Waterman pen and they replied that it was. I asked the young lady whether this was the pen that was advertised in all the magazines and she replied that it was; and I selected a pen and while I was so doing the store closed, before I could pay for it. I asked her for a receipt and she said she did not know whether she could get a sales slip through that night; so I left. It was after six o'clock at night. This was a very large department store.

2000

Q49. What was your next experience? A. My next experience was in Bucyrus, Ohio. I called on W. H. Graitz drug store and asked him what kind of pens he had. He replied Waterman.

Q50. What date was this? A. On the 16th of March, 1911. He showed me a number of pens marked A. A. Waterman & Co., New York. I asked him whether this was a genuine Waterman pen. He said it was. I asked him whether this was the pen that was advertised in all the magazines. He replied that it was. I left the store and went to see Johnston at the same town. He has a drug store there. I asked what kind of pens he had and he said Waterman. He showed me a number of pens marked A. A. Waterman & Co., New York. These pens were displayed in trays marked "Waterman's Ideal Fountain Pens." I asked him whether these were genuine Waterman pens and he replied that they were. I asked him whether these were the pens that were advertised in all the magazines and he said that they were.

2001

Q51. What was your next experience? A. At Galion, Ohio. I called on a man named Sites who keeps a drug store there. I asked him what kind of fountain pens he had. He replied Waterman and showed me pens marked A. A. Waterman & Co., New York. I asked him whether this was a genuine Waterman fountain pen. He replied that it was. I asked him whether this was the pen that was advertised in all the magazines and he replied that it was. I asked him whether there

were any other Waterman pens than the one that he had. He said no that this was the only Waterman pen there was on the market. I told him who I was and explained the distinction between L. E. Waterman Company and A. A. Waterman & Co., New York.

Q52. What was your next experience? A. At Crestline, Ohio, where I called on Marquart Bros., jewelers. I was waited on by Mr. Marquart. This was also on the 16th of March, 1911. I asked what kind of pens he had and he said Waterman, among others. I told him I wanted to buy a genuine Waterman fountain pen. He showed me a number of pens
2003 marked A. A. Waterman & Co., New York. I asked him whether this was a genuine Waterman fountain pen and he replied that it was; I could see the name on the barrel. I asked him whether this was the pen that was advertised in all the magazines and he replied that it was. I asked him whether there was any other Waterman fountain pen and he said, "No, this is the only one there is on the market."

Q53. What was your next experience? A. I then went to see A. H. Kinsey. He keeps a drug store. I asked him what kind of pens he had. Among others he said Waterman.

Mr. Bacon: I object to this testimony, as Mr. Kinsey's testimony was taken.

A. (Continued.) He showed me a number of pens marked
2004 A. A. Waterman & Co., New York.

Q54. As you have traveled around the country in what class of stores have you found Waterman's Ideal Fountain Pens sold? A. In the better class of stores, usually in the highest class of jewelery stores and the leading stationers of the towns.

Q55. Has that been your general experience in the various places that you have visited in connection with this matter? A. Yes, I have been all over the country, out to the Pacific coast. Wherever I have gone I found the Waterman Ideal Fountain Pens in the best and highest class stores that deal in such things.

Q56. I show you a photograph which was identified by the witness Kernan and ask you if you know anything about the

taking of this photograph? A. Yes, I took these two photographs myself. They are a correct representation of the windows of a man named Carey on Broadway, New York, between John and Fulton Streets on the east side of the way.

Q57. Do you recall about when you took those photographs? A. Yes, it was during the year, 1910; to the best of my recollection it was in the summer of 1910.

The two photographs identified by the witness are offered in evidence and marked Plaintiff's Exhibit 121.

Objected to as immaterial and not connected in any way with the defendant.

2006

Recess.

CROSS-EXAMINATION by Mr. Bacon:

XQ58. You are a lawyer? A. Yes.

XQ59. A member of the firm of Watson & Raymond? A. Yes.

XQ60. Admitted when? A. In 1900, I think.

XQ61. Actively practicing law from 1900 to 1911? A. Yes.

XQ62. In the City of New York? A. Yes.

XQ63. Don't you know, Mr. Raymond, that all the testimony that you have given this morning is hearsay and not legal evidence? A. No, sir. 2007

XQ64. Is it not all hearsay? A. No, sir.

XQ65. Was any of it given under the sanction of an oath? A. No, sir.

XQ66. Did anybody have an opportunity to cross-examine them and know whether they were telling the truth? A. No.

XQ67. On what theory do you make this legal evidence in this case? A. If you want my opinion on it I will give it to you.

XQ68. I would like it? A. This is all evidence of confusion. It is the only possible way in which confusion can be

2008

proved, by going to the trade and finding out from the trade itself the conditions that exist.

XQ69. Could you not have taken the testimony of the people whom you interviewed? A. In some cases, yes; in other cases, no.

XQ70. Why not? A. Because in most of the cases as soon as I disclosed who I was and what I was there for the people immediately turned around and said, "I am selling these pens to you as A. A. Waterman & Co. pens," or "Have sold this pen to you as an A. A. Waterman pen. I have not sold this pen to you as a Waterman. I have not violated the trade name of the L. E. Waterman Company, but I have explained the whole
2009 situation to you."

XQ71. Could they not have been made to swear to these things under oath? A. They might; some of them probably could be called. I don't know how they would testify.

XQ72. Would all of them have denied what you have said about them? A. No, I don't think so. I don't think all of them would but I think a great many of them would.

XQ73. You mean to say that all these people would commit perjury and that you have told the truth? A. Those that I have written receipts from would probably have told how they sold the pen. The others, I don't know. A good many of them would be perfectly fair and tell how they sold the pens.

XQ74. In some instances they said they believed so and so.
2010 You did not cross-examine them to find out whether they had a correct foundation for any such belief? A. I did, yes; in most of these cases that I have told you a brief outline of, they were interviewed by me from some five to ten minutes up to sometimes two or three hours.

XQ75. And in each instance you went in for the purpose of getting evidence? A. To a certain extent, yes.

XQ76. And you used the same formula, "Do you sell the Waterman pens," and "Do you sell genuine Waterman pens." You used that formula in each instance, didn't you? A. Not quite that form.

XQ77. In substance that form? A. Yes.

2011

XQ78. And there was never a single time when you asked them if they sold L. E. Waterman pens as A. A. Waterman pens, or the reverse of that? A. I don't know exactly what you mean by that.

XQ79. Did anybody ever tell you that they were selling A. A. Waterman pens and calling them Ideal pens? A. Yes, there was one case of that kind.

XQ80. What case was that? A. That is a case that I did not enumerate, in Kokomo, Ind.

XQ81. What was the name? A. That was a man who also ran a place in Indianapolis; he ran a combination shop or factory and a store, a pawn shop in Kokomo. I think his name was Smith if I am not mistaken. It was a young girl who 2012
waited on me there and she probably was not over fifteen or sixteen years old. I did buy a pen and I did ask for a receipt.

XQ82. She told you that it was an Ideal? A. She told me that it was an Ideal, yes.

XQ83. And notwithstanding the fact that she told you it was an Ideal pen you did not take a note of it and did not refer to it in your direct-examination? A. No. There are lots that I did not refer to.

XQ84. Did anybody ever tell you that they were selling A. A. Watermen pens and calling them L. E. Waterman pens? A. No, nobody ever told me that.

XQ85. And whenever you went in and asked for a Waterman pen they made no pretense that they were not selling A. A. 2013
Waterman pens? A. Only after I got through with them.

XQ86. If you asked them if there was any difference between the pens they told you that these were A. A. Waterman pens, didn't they? A. No, sir, in very, very few cases. I have omitted most of those cases.

XQ87. Did you find any case where they did not know that they were selling A. A. Waterman pens? A. Yes.

XQ88. In what instance were they selling A. A. Waterman pens and did not know it? A. This man Haussmann in New Orleans is one instance.

2014

XQ89. Give us the exact conversation? A. As near as I can recollect it I asked him whether he had any fountain pens and he said yes and he went over to a little case that was on top of a safe ten feet from the counter and I saw this case and saw that it was marked "A. A. Waterman & Company," and he brought out a number of pens which I saw were marked A. A. Waterman & Co., New York.

XQ90. And the case was marked in very large letters was it not "A. A. Waterman & Co.," that anybody could read? A. I think that was on the case and I think "Modern Pen Company" was on the case also. It was a small two dozen case.

2015

XQ91. And yet he told you that he did not know that he was selling A. A. Waterman & Co. pens? A. Yes, he only knew them as Watermans.

XQ92. He did not know them as L. E. Waterman pens? A. No, he just knew them as Waterman pens.

XQ93. Notwithstanding the fact that he had the sign on the case and the name on the pen? A. I can tell you the way he tried to sell the pen to me. When I called his attention to this he was very much taken back.

XQ94. You have been in Galion, Ohio? A. Yes.

XQ95. In Crestline, Ohio? A. Yes.

XQ96. In Cleveland? A. Yes.

XQ97. In Buffalo? A. Yes.

2016

XQ98. And some other places. This Bucyrus house is within a few miles of Galion? A. Yes.

XQ99. Yet you did not take the testimony of any of these people you have spoken of except one man in Crestline? A. No, I did not speak to many of the fact that I was taking testimony.

XQ100. Why did you not take the testimony of these people in these particular towns where we have already taken testimony, so as to have legal evidence instead of hearsay evidence? A. In a great many cases they would not hear of having testimony taken at all; they were afraid that they were going to get mixed up in something and they absolutely refused to give any testimony.

2017

XQ101. You could have subpoenaed them? A. We might have gone out in Ohio and Indiana and gotten orders I suppose.

XQ102. All this legal evidence that you have taken on these different trips was the best testimony that you could produce? A. No, it was not the best.

XQ103. Why didn't you produce the best? A. Because I could not get people to testify.

XQ104. Not by a subpoena? A. I suppose I might have done that, if we had had the time.

XQ105. You went to a great many towns besides those you have mentioned? A. Yes.

XQ106. You went to a great many places besides those you have mentioned? A. Yes.

2018

XQ107. And in those other towns and to those other individuals you went through the same formulae and asked them for Waterman pens and genuine Watermans pens? A. Yes.

XQ108. And in those other instances they always told you they were the same as L. E. Waterman pens? A. No, I only found two on my whole trip that told me that.

XQ109. Don't that prove to you that people who are dealing with A. A. Waterman goods call them Waterman just the same as those who are dealing with L. E. Waterman goods call their goods Waterman? A. No.

XQ110. Why not? A. In a few cases, where they were ignorant of the existence of the L. E. Waterman Company, or rather ignorant of the initials of the L. E. Waterman Company and ignorant of the fact that the L. E. Waterman Company was the original Waterman pen, they call the A. A. Waterman pens they had, Waterman pens. In the other cases, where they knew better, as soon as I called their attention to the fact that I represented the L. E. Waterman Company, they turned around and switched and said, "I am selling that pen to you as an A. A. Waterman pen."

2019

XQ111. And their testimony if taken in a legal way would then be contrary to yours? A. To a certain extent.

2020

XQ112. How long were you gone on these various trips altogether? A. I cannot tell you that. I was doing other things in the meantime. I suppose I spent possibly two weeks.

XQ113. Not more than that? A. It may have been three weeks.

XQ114. When you were doing the other things you were making inquiries about this too? A. To a certain extent; not very much.

XQ115. You went clear out to Denver on trips, when you went to St. Louis, did you not? A. I did not go out quite as far as that.

XQ116. How far west did you go? A. I was down beyond
2021 St. Louis.

XQ117. And you made inquiries in a great number of towns? A. Yes, I was in a good many towns.

XQ118. And every where you went in and asked for a Waterman pen? A. No, I did not ask for a Waterman pen when I was on this trip. I asked them what kind of pens they had and if they would say Waterman pens, then I would say, "I am looking for a genuine Waterman pen."

XQ119. What is your definition of the word "genuine"? A. The real kind.

XQ120. The true? A. Taking it from its derivation, the real kind.

XQ121. If a man sells A. A. Waterman pens does he sell a
2022 true, genuine Waterman pen? A. No.

XQ122. Why not? A. Because the name Waterman is the trade-mark of the L. E. Waterman Company.

XQ123. Do you mean to say a family name can become a good trade-mark. A. Certainly, unquestionably. I have one in my hat. It is a perfectly good trade-mark.

XQ124. Do you as a lawyer say that the name Waterman is susceptible of being made a good trade-mark unless it was used exclusively by the L. E. Waterman Company for ten years before 1905; that is, the registration mark? A. As to its being a trade-mark, under the common law, I think it can, yes.

XQ125. But it cannot under the statute law? A. Under the statute law it has to be used for ten years prior to 1905.

XQ126. Exclusively. A. Exclusively.

XQ127. And you do not claim that the word Waterman has been used exclusively by the L. E. Waterman Company for ten years prior to 1905? A. I claim that the trade-mark they have registered has been, yes.

XQ128. When was it registered? A. I think in 1906. It is in evidence.

XQ129. You do not claim that for ten years prior to 1905, A. A. Waterman & Co., were not using the word Waterman in connection with the manufacture and sale of fountain pens? A. 2024
I certainly do.

XQ130. That they were not using it? A. Yes.

XQ131. They were using the name A. A. Waterman & Co.? A. To a certain extent, yes.

XQ132. Were they not largely and openly? A. To tell the truth I never followed their advertising if they did any, very closely.

XQ133. Don't you know that they spent thousands and thousands of dollars in advertising? A. No, sir.

XQ134. You do now? A. No, sir.

XQ135. Advertising in the magazines and the papers? A. I know they have had some ads in the magazines but not to any such extent as that.

XQ136. You do not know to how large an extent? A. I 2025
know that I am a pretty wide magazine reader and I have hunted for the last two years for ads and I don't believe I have found any.

XQ137. Mr. Watson has given me a trade-mark "Watermans" registered January 15th, 1907. Was that the earliest registry of this trade-mark? A. I had very little to do with that. I cannot tell you that.

XQ138. You know of your own personal knowledge that for many years prior to 1905, A. A. Waterman & Co., were openly selling and advertising their goods under the name of A. A. Waterman & Co.? A. Yes.

XQ139. And that they used the word Waterman in connection with their sales? A. No.

XQ140. Did they not use the word Waterman in the name A. A. Waterman & Co.? A. That is a different thing. The word Waterman is contained in the designation A. A. Waterman & Co.

XQ141. You went around to these various places and threatened the people with lawsuits, didn't you? A. Never, no, sir.

XQ142. In no instance whatever? A. Absolutely none. I referred them all to you.

XQ143. Did you go to Oswego, N. Y.? A. No, sir.

XQ144. And visit a man named Blatz? A. No, I have not
2027 been in Oswego in fifteen years.

XQ145. Did you go to Mulberry, Ind.? A. No, sir, I never have been there.

XQ146. Did you have anything to do with a man named Ramsey? A. No, sir.

XQ147. Do you know who the L. E. Waterman representative was on March 6th, 1911? A. No.

XQ148. At Mulberry, Ind.? A. I think a man named Sparks had the territory in 1911, Godfrey S. Sparks.

XQ149. Do you know whether or not he went to Mr. Ramsey and told him that they had an injunction against the use of the word A. A. Waterman? A. No, I don't believe he told him that.

2028

Mr. Bacon: I offer in evidence a letter from Mr. Ramsey to the A. A. Waterman Company, New York.

Mr. Watson: Objected to as immaterial and incompetent.

Marked Defendant's Exhibit A of this date.

XQ150. Did you threaten Mr. Cohen of Buffalo? A. No. I told Mr. Cohen as I have told all these people that I have been to see, when they came to a question of talking, that I desired that they communicate with the Modern Pen Company immediately and ask them whether they could sell pens to the public as Waterman pens and genuine Waterman pens?

XQ151. Did you scare the life out of Mr. Cohen? A. I certainly did not. My wife was with me at that time.

XQ152. Did you tell him that the L. E. Waterman Company had an injunction restraining him from selling A. A. Waterman & Co. pens? A. No. I had a copy of the injunction. Sometimes I had five or six copies of the injunction that was issued.

XQ153. Of what injunction? A. The injunction in the Modern Pen Company's suit. I think you have in your hand a copy of it. Sometimes I left them with the people, sometimes I did not; I let them read it.

XQ154. And you were circulating those throughout the country wherever you went? A. No, sir.

XQ155. You were circulating them freely? A. I don't believe I had over a dozen copies altogether when I started out. 2030

XQ156. You know that is not a true statement of what it purports to be? A. No, sir.

XQ157. It purports to be an extract, does it not? A. Yes, sir.

XQ158. All that part of it is left out wherein it affirmatively appears that the defendant has the right to use A. A. Waterman & Co.? A. I don't know of any injunction where that does affirmatively appear.

XQ159. Don't you know that in the injunction as modified and entered on the 10th day of December, 1910, it affirmatively appears that the Modern Pen Company has not been guilty of unfair competition by using the name A. A. Waterman & Company? Do you mean to say that this circular that I have in my 2031
hand is a statement of the whole order signed by Judge Hough and entered on December 10, 1910? A. I think it is; it is the greater part of it. I did not prepare that and I don't know what else there is in the order. I don't believe I ever read the original.

> The printed copy referred to is offered in evidence by defendant's counsel and marked Defendant's Exhibit B of this date.

XQ160. Don't you know that this defendant's Exhibit B of this date is only about one-half of the original order? A. I could not tell you anything about it.

XQ161. Entered on that day? A. I could not tell you anything about it.

XQ162. Who did prepare this? A. I don't know.

XQ163. Where did you get it? A. I think I got it from Mr. Watson or it was on my desk at any rate.

XQ164. Then you got it from this office of Watson & Raymond? A. I took it from here; where it came from, I don't know.

XQ165. Do you know whether this exhibit was printed under the directions of Watson & Raymond? A. No, sir.

XQ166. You don't know who did direct it to be printed? A. I don't know anything about it except what I have told you,
2033 that those were on my desk here. There were about a dozen of them I believe and I put them in my grip before I went away. That is all I know of it. I have three or four of those left.

XQ167. And you got them from this office? A. I got them from my desk, yes.

XQ168. Don't you know that this Exhibit B gives you a very erroneous idea of the order that was actually entered on December 10, 1910? A. No, I do not. I will take pains to compare them after this hearing.

XQ169. Did you go to the Owl Drug Store in Pittsburg, Kans.? A. No, sir.

XQ170. Did you leave or send one of these printed copies
2034 Exhibit B to the Owl Drug Store? A. No, sir, I have never been to an Owl Drug Store in Pittsburg, Kans.

XQ171. I now show you a complete copy of the order of December 10, 1910, and ask you if you think that Exhibit B is a truthful representation of what that order contains (handing witness a paper)? A. I don't know what that order contains.

XQ172. I tell you that that is a complete order, a copy of it? A. You ask me whether this is truthful?

XQ173. Whether the printed extract is a truthful statement of what the order of December 10, 1910, holds, in that the first two pages of that paper which you now have in your hand have

been omitted? A. Let me see that printed paper (looking at Defendant's Exhibit B) I don't see any distinction between this order as it is entered here and this printed one.

XQ174. Is it not a fact that the first two pages of the order that you now have in your hand are not contained in the printed order? A. That is true.

XQ175. And the part that was omitted contains the orders of the Court does it not striking out parts of a previous order and adjudging and decreeing that A. A. Waterman & Co. were not guilty of unfair competition in using the name? A. I don't know about that. That is stricken out from the other order. The order as finally entered as I understand it, has this order—and that is what the printed paper is—the order as finally entered. 2036

XQ176. Does not the order of December 10, 1910, contain a great deal more than the printed order, Exhibit B? A. I don't think so, no, sir.

XQ177. Does not the order of December 10, 1910, recite the striking out of paragraph three of the original order and striking out the words:

> "And it also appearing that the defendant is guilty of unfair competition in trade with the plaintiff by using the name—'A. A. Waterman & Co.' in connection with the marking, advertising and selling of fountain pens and parts thereof" and by striking out the "3" paragraph of said preliminary injunction reading as follows: 2037
>
> "3. Using in connection with the manufacture or sale of fountain pens (other than fountain pens of plaintiff's manufacture) the name 'A. A. Waterman,' or 'A. A. Waterman & Co.' or 'A. A. Waterman & Company' or 'Arthur A. Waterman & Company,' or any corporate, firm or individual name containing the words Waterman, Waterman's or Watermans, or any mark or name containing the word Waterman in any form, whether the same be or be not coupled with other names or initials, or with the initials 'A. A.' or with the initial 'A' or whether the same be or be not used in collocation

2038 *Walter B. Raymond*

with the word 'pen' or 'Fountain Pen' or other descriptive words."

"And it is further ordered, adjudged and decreed that the said order of August 29th, 1910, be and the same hereby is modified so as to read as follows:"

A. The order speaks for itself as to what is contained in it. As I understand the order, the temporary injunction is what is contained on the last page of that typewritten order that you have given me; that which you have given me as printed is a complete copy of that injunction order as it now stands.

XQ178. Does not Exhibit B purport to be an extract from an
2039 order of the United States Circuit Court for the Southern District of New York entered on the 10th day of December, 1910? A. Yes.

XQ179. Entered pursuant to mandate of the United States Circuit Court? A. Yes.

XQ180. This order of December 10th, 1910, is a whole order is it not? A. An extract is not the whole order.

XQ181. You omitted from this extract everything which says that the A. A. Waterman & Co. had a right to use their name, did you not? A. I always explained to the people that I saw that at the present time there was nothing contained in that order to prevent them from selling the pens which they had as A. A. Waterman & Co., New York pens, but that they should not sell
2040 the pens under the order as then issued as Waterman pens.

XQ182. Then why did you circulate a garbled extract of the order of December 10, 1910? A. I do not consider that a garbled extract. I consider that the order as it now stands, the order in the temporary injunction.

XQ183. Don't you find that many of the highest class stores where you have been also carry A. A. Waterman & Co. goods? A. No, sir, I do not.

XQ184. Do not many of the large department stores? A. There is where you sometimes find them, because they advertise in accordance with department store practice Waterman's pens at cut prices. That is the only time when you find them in department stores, when they are doing advertising.

2041

XQ185. Would you not call Granger Freres the largest store in Canada? A. I don't know Granger Freres.

XQ186. Would you not call Warwick Bros. and Rutter of Toronto the largest jobber of the kind in Canada? A. I don't know.

XQ187. Do you know Scranton & Wetmore of Rochester? A. Yes.

XQ188. Are they not the best of their kind? A. There are other stores in Rochester which are of a far higher class.

XQ189. They are jobbers? A. To a certain extent. They have a retail store.

XQ190. L. E. Waterman Company do not sell to jobbers at all? A. No.

2042

XQ191. You sell to Carey, a photograph of whose window you have submitted here this morning? A. Not that I know of.

XQ192. Don't you know that you sell L. E. Waterman pens to Mr. Carey the eccentric advertiser? A. Not that I know of, no. I never heard of it. I would like to know if we do.

XQ193. He has a Boston store, has he not? A. I believe so.

XQ194. Don't you know you sell the Boston Store? A. I don't know anything about it. I don't handle the selling department of L. E. Waterman Company. I know Mr. Carey has bought some of our ink.

XQ195. Mr. Carey is a very eccentric man is he not? A. I have only met him once.

XQ196. And it is a very eccentric business? A. From the outside, yes. 2043

XQ197. He sells all sorts of pens where he can get them in job lots? A. I don't know about that.

XQ198. Do you know that Mr. Carey does not have L. E. Waterman goods on sale in his Broadway, New York store? A. If you refer to these advertisements in the window I do not think it was that that I took those pictures for. I don't know whether he had them or not. I took the picture of that window because of the peculiar style of advertising that there is shown in those pictures. If you will look at those pictures very closely you will find that Mr. Carey in his eccentric way is intending

to advertise the A. A. Waterman & Co. pens and is trying to hide the fact that they are A. A. Waterman pens.

XQ199. You do not claim that A. A. Waterman & Company or the Modern Pen Company have anything to do with Mr. Carey's eccentric advertising, do you? A. I think they have, just as I think the A. A. Waterman Company who sell Basheim in Cleveland have something to do with the ad that appears on that Cleveland sign.

XQ200. In this advertisement of the Cleveland store there is a large sign "Agency for A. A. Waterman & Company"? A. No, you cannot find that there. You find "The agency for the A. A. Waterman Company." That is what I think is there.

2045 XQ201. Do you have any reason to believe that the Modern Pen Company had anything to do with that advertisement or those pictures? A. I believe they had a whole lot to do with the continuance of that. Their salesman was in Cleveland constantly and if this advertisement is not a correct advertisement those salesmen ought to have called Basheim's attention to it.

XQ202. What difference does it make whether he says the A. A. Waterman Company or A. A. Waterman & Co.? A. If you are claiming to hold the right to use the name of A. A. Waterman & Co. under the Kellogg decree. I should say that this use is unfortunate.

XQ203. Do you mean to say you have any evidence whatever that the Modern Pen Company ever saw this window or
2046 this photograph? A. The Modern Pen Company acts as any other corporation does, through its agents and I do believe that the agent of the Modern Pen Company and the A. A. Waterman & Company did see that sign and permitted it to be there.

XQ204. What is the foundation of that belief? A. That sign was a permanent sign. It was not a transient sign, done with loose card board, to remain a day or so, or anything of that kind, that sign was a permanent sign and has been there for months and months.

XQ205. How do you know that they have ever had salesmen call on Basheim? Mr. Geyer tells me they never have had? A. I don't know what Mr. Geyer knows about it.

XQ206. Mr. Geyer tells me also that they have not had any salesman in Cleveland for over a year? A. I don't know what Mr. Geyer says is absolutely so or whether Mr. Geyer knows that there have been salesmen there within a year; because a store right above that Basheim's store, called Blum Cigar Store where they also have a display, a picture of which I have here—a man in there told me that the A. A. Waterman Company salesman had been there some time before.

XQ207. But did not say when? A. A short time before. This was in December.

XQ208. When was this picture of the A. A. Waterman Company taken? A. That picture was taken on February 10, 1911.

XQ209. You don't know how long it had been there? A. It 2048
had been there to my knowledge since some time in December.

XQ210. Then you have not any legal proof that anybody representing the A. A. Waterman Company had ever seen that sign? A. No, but I have Sherlock Holms proof that that was a very old sign at the time when I saw it.

XQ211. Did you find any of these people that told you that any representative of the A. A. Waterman Company had been deceiving them? A. I found it very hard to get any of these people to say what the representative of the A. A. Waterman Company had told them. In most cases they said they did not know who he was, they could not even describe him and they did not know what he said, or, "I don't want to get mixed up in this case at all. Buying fountain pens is only a minor part of my 2049
business and I cannot swear what he said or did not say."

XQ212. You spoke of a conversation with Mr. Kinsey. What did he tell you? A. Mr. Kinsey told me a somewhat different story from what he said on the stand, a little bit stronger story from my side of the case from what he told on the stand.

XQ213. On the cross-examination? A. No, on the direct-examination.

XQ214. He knew perfectly well the difference between L. E. Waterman pens and A. A. Waterman pens, didn't he? A. That is the point that Mr. Kinsey fell down on on his examina-

tion because when I saw Mr. Kinsey he told me that he did not know the difference between the pens, and I have it so marked in my note book, where I put it down immediately after I left him. And that is the reason I called him as a witness.

XQ215. And when he was sworn he told the truth? A. I don't know whether he told the truth or not. I only know what his testimony was and what he told me previously.

XQ216. Is it not a fact that all of these parties if they were put under oath would tell a different story from what you do? A. That I cannot tell. I can only tell what they tell the general public, and I am one of the general public, who buys these pens.

2051 XQ217. Did you meet anybody on that trip who told you that anybody representing the Modern Pen Company had sold them a pen as other than an A. A. Waterman pen? A. Yes.

XQ218. Name the party? A. Mr. Homrighous, of Shelbyville, Ill.

XQ219. Why didn't you have his testimony taken? A. Because Mr. Homrighous would not give his testimony.

XQ220. Couldn't you subpoena him? A. I could and probably will before I get through.

XQ221. You told about a conversation with Mr. Sites, a dealer in drugs in Galion, Ohio? A. Yes.

XQ222. You did not examine him when you were down there? A. No, Mr. Sites would not go on the stand at all and he tried to deceive me in the sale of a fountain pen.

2052 XQ223. Do you think that he knew the difference, that it was a willful deception on his part? A. To the best of my knowledge I think he ought to know the difference.

XQ224. Then do you blame the defendant for any willful and malicious act of any one of the dealers? A. Yes.

XQ225. Why so? A. Because as near as I can make out from a close examination of not only these people but of dozens and probably hundreds besides those whose names I have given here, in not one instance did the man who sold them A. A. Waterman & Company pens explain to them how those pens could be sold to the public or that those pens should be sold only

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as A. A. Waterman & Co. pens and not as Waterman pens, or a genuine Waterman pen or L. E. Waterman Company pens.

XQ226. Do you claim that when a salesman sells these goods as A. A. Waterman & Co. products, that it is their duty to tell them that they are not the same as the Sterling, and the L. E. Waterman and the Ideal and the Globe? A. I claim this, that when a company starts in business under a name which is the same or similar to the name of an older concern in business, that it is the duty of the junior concern to so sell its goods and so give explanation to the dealers handling the goods that the possibility of confusion is practically eliminated.

XQ227. Then I understand you to say that it is in your opinion the duty of the defendant's representative not only to tell the people what they are selling them but that they differ from the L. E. Waterman goods? A. Yes, to clearly distinguish their goods from the goods of the L. E. Waterman Company.

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XQ228. Is not the fact that they tell them that they are A. A. Waterman & Co. manufacture a sufficient distinction? A. Not where the salesmen do the way that Mr. Bartlett did and call the pens a Waterman pen all the time when he is selling them.

XQ229. You heard Mr. Bartlett deny that didn't you? A. I heard Mr. Bartlett say that he sold the pens as Waterman pens and he had a right to sell them as Waterman pens.

XQ230. Do you mean to say that he testified that? A. I certainly do, yes.

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XQ231. Don't you know that he swore that invariably he always told them that they were the product or manufacture of A. A. Waterman & Co.? A. I knew that he swore to that in his direct-examination but on his cross-examination he said that he sold the pens as Waterman pens and he said that it did not make any difference to him how the pens were sold, after they got into the dealers' hands; that was not his business; they belonged to the dealer when he sold them.

XQ232. Do you mean to say that on cross-examination he ever said that he sold any goods as Waterman pens without explaining that they were A. A. Waterman's pens? A. I would

not say exactly that, no, but I will say that he said that he sold the pens as Waterman pens and called them Waterman pens in speaking of them.

XQ233. Did he not say that he never made a sale without explaining to the people that they were A. A. Waterman goods? A. I would have to go through that examination very carefully to find out whether that is there or not. I know that the pens are sold, from what the dealers all over the country tell me, as Waterman pens; that they know them as Waterman pens; and are told to sell them as Waterman pens.

XQ234. Who ever told you that they were told to sell them as Waterman pens? Give the name of any man who has ever
2057 told you that? A. I think Mr. Baker, up in Allegan, said that.

XQ235. Did he say that in his testimony? A. I think so. I may be rusty on that but I have had that said to me a dozen times.

XQ236. On your direct-examination you spoke of Mr. Homrighous of Shelbyville, Ill., and I have it here quoted on my notes that he was "under the belief that these were L. E. Waterman pens." A. Yes.

XQ237. Did he say that he was under that belief? A. Yes.

XQ238. Did he tell you why he was under that belief? A. Yes.

XQ239. Why didn't you give that in your direct-examination? A. I don't know. I perhaps omitted to do it. He told
2058 me he was under that belief because the pens were so sold to him.

XQ240. By whom? A. By the representative of the Modern Pen Company or A. A. Waterman.

XQ241. Did he say who the man was? A. No; he tried to find the name from the bill and he could not find it. The reason that I did not call him as a witness was that he seems to have continued the sale of these pens after he found that they were not the L. E. Waterman goods.

XQ242. And he continued selling them how? A. He continued to sell them as Waterman pens.

XQ243. Then he did know there was a difference between L. E. Waterman pens and A. A. Waterman pens? A. Yes, he

found out the difference after awhile. I think he said that a man representing the Laughlin concern told him the distinction. That first sale to Mr. Homrighous was I think two or three years ago.

XQ244. And the time when he was under this belief was then two or three years ago? A. It was immediately after the salesman had sold him the goods and possibly eight or nine months thereafter.

XQ245. Did you ask Mr. Johnston of Bucyrus, Ohio, to testify? A. No.

XQ246. Why didn't you ask him to testify so as to get legal evidence? You were right near there and on the Galion trip? A. Mr. Johnston was a very peculiar character; he was a very peculiar man. He was a cripple and a very peculiar man. I never talked very much with him. 2060

XQ247. You know that in each one of these instances where we have taken testimony, cross-examination has developed very frequently a different phase of the matter from that indicated in their direct-examination? A. To some extent.

XQ248. And if these parties had testified instead of your testifying for them the cross-examination might have developed a different state of facts? A. No, that was not the purpose. The idea is to show the way these people sell to the public; not how they will testify but the way they represent their goods and try to sell them to the public. That is the purpose of my telling what my experience with these people was. 2061

XQ249. I thought you said a little while ago that it was to show confusion? A. That confusion arises largely from that very thing, the way they sell to the public.

XQ250. Don't you know that long before this suit began, in a printed brief in the New York State Action I admitted that there was a confusion arising from the similarity of names? A. That admission, as I recollect your long statement the other day, was somewhat qualified. What I have testified today shows the way the dealers throughout the country seek to dispose of their goods to the public.

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XQ251. But does it show that the Modern Pen Company had anything to do with their matters? A. It could not be so universal as I have found it without the Modern Pen Company and its agents knowing what was going on.

XQ252. How do you know that? A. Well, just by ordinary business sense. If anybody misrepresents your goods or sells any goods under a wrong name and does so systematically, the house is very apt to find it out.

XQ253. You never once asked them if they were selling A. A. Waterman goods but what they told you yes? A. Oh, yes.

XQ254. Did they ever deny that their goods were A. A. Waterman goods? A. I don't know exactly that. I very sel-

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dom asked them that question until after I had disclosed my identity.

XQ255. Then you had tricked them by using the word Waterman or genuine Waterman?

Mr. Watson: I object to the form of the question and its inference. I call the Court's attention to the attempt of counsel to inject something into the record which the testimony of this witness does not justify.

XQ256. Is it not true that you went into each one of these places for the express purpose of entrapping them into saying that they were selling Waterman pens?

Mr. Watson: The same objections.

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A. No. I went into each place and asked them what kind of pens they were selling and when they said Waterman pens I asked them for a Waterman pen.

XQ257. And if you had asked them the kind of Waterman pen they would always have told you, wouldn't they? A. No, I asked them that many, many times.

XQ258. And didn't they always tell you A. A. Waterman goods? A. No, Waterman pens; the same that our own dealers have testified and told me the goods were called for by the public.

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XQ259. Is it not a fact that the public always call for A. A. Waterman goods under the term Waterman? A. No, sir, not if they know what they are calling for.

XQ260. But when they do not know what they are calling for? A. When they call for goods in accordance without advertisement, yes.

XQ261. In accordance with our advertisement; what then? A. You will have to show me the advertisement first.

XQ262. Don't you know that our people have spent hundreds of thousands of dollars in advertising? A. No. You will have to show me.

XQ263. In Buffalo, N. Y., you went to Adam, Meldrum & Anderson? A. Yes.

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XQ264. They told you they did not know the difference between L. E. goods and A. A. goods? A. I won't say that. The young lady at the counter told me that the pen she sold me was a genuine Waterman pen and was the only Waterman pen that was on the market.

XQ265. And you went around the country quizzing young ladies fifteen years old as to technical names? A. This young lady was probably thirty or forty. The young girls I omitted from my testimony.

XQ266. Is it not a fact that you had a lowsuit long ago with Adam, Meldrum & Anderson? A. No.

XQ267. The L. E. Waterman Company? A. Not that I remember.

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XQ268. Is it not a fact that they knew perfectly well the difference between L. E. Waterman pens and A. A. Waterman pens? A. If you want me to tell you the rest of what happened up there I will do so.

XQ269. Go on? A. I had purchased the pen and had the receipt and then asked for the head of the concern and was told that Mr. Bishop was the head of the concern. I went around and saw Mr. Bishop and showed Mr. Bishop the pen I had bought and the receipt. I told him who I was and what I was doing. I asked him whether that was the way that he merchandised goods. Mr. Bishop said no; "I see that a wrong has

2068 been done to the L. E. Waterman Company. I want you to tell me more about it." I showed Mr. Bishop a copy of that injunction. Mr. Bishop then sent for his salesman.

XQ270. The printed copy, Exhibit B of today? A. Yes. Mr. Bishop called for his salesman or rather the purchaser, the buyer of goods and he was a man named Lyon. Mr. Lyon came in and immediately began to rail at me and said, "Why didn't you come to me?" I said, "I did not come to you because I thought you knew what you were doing and I did not think the head of the house knew what you were doing." I had with me a number of advertisements that had been issued in the Buffalo papers advertising Waterman pens at cut prices, no initials
2069 being in front of the name. I laid them before Mr. Bishop and I said to Mr. Bishop, "Your house is a big house with a fine reputation. Why don't you sell these goods under the name that is on them?" Mr. Lyon began to talk and he said, "You cannot come in here and tell me how I am to sell my goods." Mr. Bishop turned around, after he had got all through and after I had asked Mr. Lyon whether he was through and said to Mr. Lyon, "You cannot talk to this gentleman in this way. He comes in with a fair statement of something being done in this house and I am going to treat him with all courtesy and you shall do the same. Now just keep quiet until this is over."

XQ271. The head of the house did not know the difference? A. The head of the house did not know the difference.

2070 XQ272. The head buyer— A. The head buyer knew the difference and was merchandising those goods as Waterman pens, knowing the difference and when I called the attention of the head of the house to that the buyer was very much wrought up and said I had no business to jump over his head and go to the principals. I then told Mr. Bishop to take the matter up with the Modern Pen Company.

XQ273. You do not blame the Modern Pen Company because he did wrong, do you, when he knew better? A. I do because they have handled such goods for a number of years; the advertisements of Waterman pens having appeared in the Buffalo papers for years.

XQ274. Why don't you produce some of them? A. I will do so. I asked Mr. Watson where they were this morning. We will produce any number of them.

XQ275. You do not know that the Modern Pen Company has ever seen any of those advertisements? A. I don't know. I am under the belief that they helped to pay for them.

XQ276. What foundation have you for that belief? A. Because their advertising is so extensive.

XQ277. Then this seems to be a case where there was a wide advertisement of A. A. Waterman goods? A. I don't know that it was an advertisement by the Modern Pen Company. There was a local advertisement of these pens.

XQ278. You cannot say that any man connected with the Modern Pen Company knew anything about these things that were told to you on these various trips and concerning which you have testified this morning? A. You mean have I any definite and absolute knowledge of it? 2072

XQ279. Yes? A. No.

XQ280. You had had litigation with the Standard Drug Company some time ago? A. Yes.

XQ281. Then they knew perfectly well the difference between L. E. pens and A. A. pens? A. Yes.

XQ282. You know that the Modern Pen Company at all times claimed that the Standard Drug Company was a stranger to them? A. I know that at the hearing in contempt last Monday Mr. Teller produced a letter dated November, 1910, from the Modern Pen Company in which they said that they had won their suit in New York and that the injunction had been dissolved and for him to go ahead and sell pens. 2073

XQ283. To sell A. A. Waterman pens? A. To sell our pens.

XQ284. Had not they a perfect right to do that? A. No.

XQ285. That was Mr. Teller of the Standard Drug Company? A. Mr. Teller was the agent of the Standard Drug Company.

XQ286. Don't you know that he claimed to be a tenant? A. I don't know what he claimed. I know what he was.

XQ287. Can you swear that he was an agent and not a tenant? A. Yes, because I have seen all the papers.

XQ288. What papers? A. Seen all Mr. Teller's papers in connection with the Standard Drug Company.

XQ289. Is it not a fact that both he and the Standard Drug Company claimed that Mr. Teller was a tenant and paid his rent by a commission on the pens? A. I don't know what that is unless it is an agency.

XQ290. And do you swear that he was an agent and not a tenant? A. Yes.

XQ291. You know it has been claimed that there was collusion between the L. E. Company and the Standard Drug Com-
2075 pany, that they wanted to get rid of Mr. Teller? A. Yes.

XQ292. You know that is the fact today, don't you that they do want to get rid of him? A. No.

XQ293. When you went to see Mr. Cohen of Buffalo didn't you tell him of this injunction, this Exhibit B, which does not give the whole order, and threaten him with a suit? A. No, sir.

XQ294. Give the conversation with Mr. Cohen in Buffalo? A. As near as I can recollect the conversation it was this. Mr. Cohen had a great big Waterman Ideal Pen in his window, one of the big display pens that the L. E. Waterman puts out for advertising purposes; and underneath it at the bottom of his window there was a small sign "Waterman pens at cut prices." And those pens were all A. A. Waterman & Co. pens. I went in
2076 and asked him what kind of fountain pens he had and among the other pens that he said he had were the Waterman pens.

XQ295. Did he sell L. E. Waterman pens? A. I did not see any.

XQ296. Do you know that he did not sell L. E. Waterman Pens? A. I know what he showed me were A. A. Waterman & Co., New York, pens.

XQ297. And if he had one of those big advertising pens of the L. E. Waterman presumably he sold their pens, didn't he? A. No. Those signs get away from the concern and appear in most unusual places. As I recall, Mr. Cohen became very abusive.

XQ298. Then he is the man who said you frightened the life out of him and he sent back his A. A. Waterman pens? A. If Mr. Cohen did anything like that he did not do what I told him to do.

XQ299. What did you tell him? A. What I told him to do was to be sure that he sold those pens as A. A. Waterman & Co., New York pens and for him to communicate with you immediately as to whether or not he had the right, as he claimed that he had, to sell those pens as Waterman pens; and he said in very abusive language in the presence of my wife, that he would do as he pleased about selling those pens. He was going to sell them as Waterman pens and would continue to sell them as Waterman pens until he was restrained. 2078

XQ300. In all of your trips to the south, New Orleans and Birmingham and other places, you never found a single customer whose testimony you wanted to take so as to get legal evidence? A. That is a little far away. I did not think we needed it. I found lots of them whose testimony I would like to take very much indeed.

XQ301. You did not mention Mr. Levy of New Orleans, did you? A. No.

XQ302. Tell us about Mr. Levy? A. I went in to see Mr. Levy and I said to Mr. Levy, "I see you have got a lot of A. A. Waterman & Co. pens." He said, "Yes," and he also carried a line of L. E. Waterman pens. I said, "What do you carry these pens for, Mr. Levy?" "Well," he says, "you know I am a jobber and I get lots of calls for Waterman pens and of course, we cannot sell your pens to the jobbing trade, so we always sell them A. A. Waterman pens." I said, "Do you think that is a good, fair thing for you to do, as far as L. E. Waterman Company is concerned?" "Well," he said, "they want Waterman pens and I give them to them." I said, "Don't you think you should do differently from that? We have always treated you right." "Well," he says, "that is business." 2079

XQ303. Do you blame the defendant for his doing that? A. I blame the defendant because they knew that he was doing it.

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XQ304. How do you know that they knew it? A. They could not help it.

XQ305. Because Mr. Levy sells any number of people from Texas and after Mr. Levy has sold them they come back to you, is that any evidence that we knew that he was selling our pens as Waterman pens? I ask you as a lawyer? A. It is only inferential evidence because your salesmen run across these cases all the time and they do not report them to you. Just the same as our salesmen do not report to us all the trouble that they have with A. A. Waterman & Company pens. A salesman will not report any trouble in his territory if he can get out of it; and that is the reason that I went out to see these people instead

2081 of relying on the reports of the salesmen.

XQ306. Didn't you go in to Mr. Levy and pursue about the same questioning that you have with these other people? A. No, sir.

XQ307. Didn't you tell him, "You have been posted and know all about it"? A. No, I saw Mr. Levy carried L. E. Waterman pens and so I did not go into that at all. I had previously learned from the trade around town that Mr. Levy was a jobber.

XQ308. And you do not sell to jobbers? A. We do not sell to jobbers except for their retail trade.

XQ309. In these different town in the south where people said they did not know that there was but one Waterman, are L. E. Waterman pens sold in the same towns? A. Yes.

2082 XQ310. How large is Meridian, Miss., for instance? A. Fifteen or twenty thousand.

XQ311. Do you believe that they told the truth when they said they did not know that there was but one kind of Waterman pen? A. I don't know whether they told the truth or not. I only know what they told me.

XQ312. The L. E. Waterman pen is sold in all those towns where you went? A. Yes, sold universally.

XQ313. And you went to your agent first and asked him where you could get hold of anybody that would be apt to call A. A. Waterman goods Waterman? A. No, I went out without a list of customers. I went right through towns from

store to store and made up my list as I went along. I had a list of L. E. Waterman Company customers but no prospective A. A. Waterman & Co. dealers.

XQ314. When you asked for these sales slips or receipts with the word Waterman on it you did that in order to collect evidence? A. To a certain extent, yes.

XQ315. And to protect innocent people in the sale of A. A. Waterman & Co. pens for a Waterman? A. No, I did it to get their ordinary every day way of selling those pens.

XQ316. And you would sometimes get them from young girls? A. No, sir; not one came from a young girl.

XQ317. This man Klem of Birmingham was what is called a demonstrator? A. He was in Chattanooga, a cigar store. 2084

XQ318. Wasn't he a demonstrator? A. No, he was the proprietor of the store. There was a young man there who was a demonstrator. I have his card somewhere.

XQ319. These demonstrators sell all kinds of pens, don't they that they can get hold of? A. This man was selling what was known as Salz pens. Along with those he had a quantity of the A. A. Waterman & Co., New York, pens and these Globe pens.

XQ320. You told him very plainly that there was a difference between the A. A. Waterman pens and the Globe pens? A. Yes.

XQ321. You did not find anything in him to condemn, did you? A. Except the way he tried to sell these pens and the 2085 way he sold some of the pens while I was there. He sold them as Waterman pens, genuine Waterman pens.

XQ322. Did he have the advertisement out "A. A. Waterman"? A. Yes.

XQ323. So that anybody who bought a Waterman knew that he was getting an A. A. Waterman pen? A. No, sir; not from his story.

XQ324. Not from his advertisement? A. Well, the advertisement was more of a come-on for his story when he got them inside.

XQ325. Have you got Butler's catalogue? A. I have one of them some place.

XQ326. You have not produced it? A. No.

XQ327. They have a New York office, don't they? A. Yes.

XQ328. And the goods that they sell in St. Louis, they get from this office? A. No, sir; each one of their departments buy separately as I understand.

XQ329. Don't you know that all the pens that they get in St. Louis are bought through the New York Office? A. No, I do not.

XQ330. Mr. Geyer tells me that they make an exception in fountain pens and buy them all through the New York house
2087 and that they do not sell a pen to St. Louis direct. A. Mr. Littledale I think was grossly misinformed as to the way they bought.

XQ331. And so was Mr. Butler in Chicago? A. Yes.

XQ332. In Delaware, Ohio, you did not call Mr. Wells or Mr. Hardin as a witness when you were there? A. No.

XQ333. Don't you know they sell L. E. Waterman goods? A. At the time I was there they had two or three old second-hand L. E. Waterman pens and that is all they did have.

XQ334. Well, when I was there they had more L. E. Waterman goods than they did A. A. goods; I saw them with my own eyes? A. They did not have them when I was there. What they had were all second-hand goods.

2088 XQ335. They had a dozen L. E. Waterman pens and about half a dozen A. A.? A. When I was there they only had two or three L. E. Waterman pens and they were all second-hand.

XQ336. They have a house in Columbus don't they? A. No, Mr. Wells has a house in Columbus.

XQ337. Mr. Hardin told me that they got their goods from Columbus? A. The L. E. Waterman Company does not sell Mr. Wells. We tried to sell him for years and have never been able to.

XQ338. Do you mean to say that Mr. Wells of Columbus does not handle L. E. Waterman pens? A. My information comes from visiting the store and from conversation with Mr.

Hudson who is the L. E. Waterman Company representative in Ohio who went to see him twice on this last trip. Mr. Wells said he was very much interested in Waterman pens but he never handled them.

XQ339. Is it not because he was mad with L. E. Waterman and will not trade with them but gets them from some other store? A. I don't know where he gets them but he is not L. E. Waterman's agent, so far as I can find out.

Deposition closed.

(Signature waived.)

Plaintiff's Exhibit No. 117.

092 **Plaintiff's Exhibit No. 118.**

093

Plaintiff's Exhibit 112. 2095

$2.00 12-16, 1910.

Received from W. B. Raymond Two Dollars, For Waterman Ft. Pen.

MUIR & COMPANY,
W. L. M.

Plaintiff's Exhibit No. 114.

No. 27039

2096

Bought of FRANK B. THAYER,
No. 85 Union Ave., etc.

Salesman FBT. Memphis, Tenn., 1/19/1911.

Mr. W. B. Raymond,
Ft. Payne, Ala.

1 Waterman Pen $2.00

PAID.

Plaintiff's Exhibit No. 116.

2097

Nashville, Tenn. 2/3/1911.

Mr. W. B. Raymond

In Account With
JENSEN, HERZER & JECK,
Jewelers and Opticians
402 Union Street,

1 Waterman Self filling Fountain Pen $2.00

PAID, Feb. 3, 1911.

2098 **Plaintiff's Exhibit 120.**

Customer's Voucher,
ADAM, MELDRUM & ANDERSON CO.,
Buffalo, N. Y.

BK
454308

2/11/1911.

1 Waterman Pen $2.00

Three invoices produced by the defendant, of shipments and sales of fountain pens by the defendant, imprinted "Royal Ideal Pens," to John Saadi of Washington, D. C., are offered in evidence and marked Plaintiff's
2099 Exhibit No. 121.

Same objections.

Plaintiff's Exhibit 121.

(Bill Head)

MODERN PEN COMPANY
Sole Selling Agent for
A. A. WATERMAN & Co.

2100 (Picture of Fountain pen stamped A. A. Waterman & Co., New York.)

Modern Self-filling and Middle-Joint.

FOUNTAIN PENS, GOLD PENS AND LINCOLN FOUNTAIN PENS 2101

125 Greenwich Street,—22 Thomas Street.

New York, 7/10/09.

Sold to
J. Saadi,
602-9th St., N. W.,
Washington, D. C.
Due 8/10/09.

		Our					
					One Wheel	7.45	
144	Imprinted	(703)	12	6.00	Net	72.00	
72	"	(A La)	11	4.50	"	27.00	
72	"	(A)	14	4.50	"	27.00	2102
24	"	(503)	15	9.00	"	18.00	
						151.45	

Labels
Special Boxes.

(Same Bill-head as above)

New York, 10/13/09.

Sold to
J. Saadi,
602—9th St., N. W.,
Washington, D. C. 2103
Due 11-13-09.

		Our				
216	Imprinted	(A)	14	4.50		81.00
72	"	203	12	6.00		36.00
48	"	503	15	9.00		5.00
72	"	A-La	11	4.50		27.00
24	Mah. Trays					6.96
						186.96
2 Gross Mod. Clips				2.75	Net	5.50
						192.46

2104 *Plaintiff's Exhibit 121*

(Same Bill-head as above)

New York, 12/4/09.

Sold to
J. Saadi,
604-9th St., N. W.
Washington, D. C.
Due Jan. 4, 1910.

144	Imprinted	(A)	14	4.50	Net	54.00
144	"	(203)	12	6.00	"	72.00
144	"	(La.)	11	4.50	"	54.00
36	"	(503)	15	9.00	"	27.00

2105

207.00 Forward

Imprinted Royal Ideal

(Same Bill-head as above)

New York, 12-4-09.

Sold to
J. Saadi,
602 9th St., N. W.
Washington, D. C.
2106 Due 1-4-10

With Other Goods.

					Forward	207.00
24	Mod.	20	2.00	50	48.00	24.00
12	Feeds	11		Net		1.00
12	"	12		"		1.00
12	"	14		"		1.00
12	"	15		"		1.00
1 Gross Mod. B. Clips				"		2.75
						237.75

24 Mah. Trays (Balance of former order) No Charge.

RICHARD W. BARKLEY, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Watson:

Q1. Please state your name, age, and place of business? A. Richard W. Barkley; residence, Montclair, Essex Co., New Jersey.

Q2. You are more than twenty-one years of age? A. I am upwards of twenty-one.

Q3. What is your business? A. I am a solicitor of patents and expert in patent causes.

Q4. Where is your office? A. 220 Broadway, New York.

Q5. What experience and education have you had that would 2108
fit you for an expert in patent causes? A. I am a graduate of the United States Naval Academy at Annapolis from which institution I graduated in 1883. I was honorably discharged from the navy in 1885, and in 1886 I entered the United States Patent Office as assistant examiner, which position I held for four years and four months when I resigned to take up my present line of work. As patent attorney I have prepared a great many applications for patents and prosecuted the same, and generally to a successful conclusion.

Q6. Have you ever testified in patent causes or causes involving patent matters? A. I have.

Q7. How long have you been so engaged? A. About ten or twelve years in that line. I have also given opinions in writ- 2109
ing upon the validity of patents and have made validity and infringement searches.

Q8. Have you examined United States Letters Patent No. 744,642, granted to Harry W. Stone, dated November 17, 1903? A. I have, and understand the same.

Q9. Have you examined United States Letters Patent No. 290,820, granted to William Vale, December 25, 1883, and compared it with the Letters Patent to Stone just referred to?

Mr. Bacon: This is objected to as incompetent, irrelevant and immaterial. This is not a patent suit and the validity of any patent is not in question.

A. I have.

Q10. Have you examined United States Letters Patent No. 387,686, granted to Ignatz Leutner, and compared the same with the Stone patent just referred to?

Same objections.

A. I have.

Q11. Do you understand the said patents to Vale and Leutner? A. Yes.

Q12. Have you examined United States Letters Patent No. 713,927, granted to E. W. Warriner, November 18, 1902, and compared it with the said patent to Stone? A. I have.

2111 Q13. Will you please compare the said patent to Stone with the said patents to Vale Leutner and Warriner just referred to? A. The patent to Stone relates to a fountain pen comprising a barrel *a*, one end of which is closed by the nib holder *b*, and the other end of which is closed by a screw-threaded shank c^1, which engages with a threaded opening in the end of the barrel. Outside the barrel the shank c^1 is provided with a knob or nut *c* which is pinned or rivetted thereto. Within the barrel and having its ends fast to a reduced portion b^2 of the nib-holder and to the end c^2 of the shank is a rubber tube or ink-sack *e*. By twisting the knob *c* the greater part of the air can be expelled from the rubber tube *e*, after which, by inserting the nib end of the pen in ink and untwisting the rubber tube, the

2112 ink is forced into the rubber tube by atmospheric pressure. Externally the shank is screw-threaded to engage with a threaded opening at that end of the barrel *a;* so that the rubber tube is also stretched, as well as twisted up, in the process of depriving it of air. The pen is also provided with a nib or pen protector *d* which is adapted to be placed upon either end of the barrel, and it is stated in the claim that the nut *c* is of less diameter than the bore of the said cap, the object being to be able to put the cap on and off the rear end of the holder without disturbing the cap or twisting the rubber sack *e*.

The patent to Vale has a cap *h* for covering the nib of the pen; but it does not appear to be placed upon the other end of

the barrel, but the other elements of the claims of the Stone patent are present in the Vale patent.

In the patent to Leutner there are present the same elements as in the Stone patent in suit, the twisting head or nut *a*, corresponding with the nut *c* of the Stone patent and having the same function and working in the same way, as shown in Figs. 1 and 2. The Leutner patent mentions a cap to be screwed upon the end *1* to protect the pen point but makes no provision for screwing the same upon the other end of the holder. I would observe, however, that the nut *a* of the Leutner patent is of less diameter than the barrel of the pen.

The patent to Warriner, No. 713,927 shows a cap *b* which 2114
he calls "a nib-protector, which is interchangeably applicable to each end of the holder in the customary manner" (page 1, lines 33 to 35). This patent to Warriner contains the barrel, the nib-holder, the rubber sack and the twisting member, all acting in substantially the same manner and for the same purposes in the Stone patent in question. The external diameter of the nut *j* by which the rubber sack is twisted and untwisted, is less than the internal diameter of the nib protector *b*. This is clearly shown in Fig. 1 of the drawing of the Warriner patent where the nut *j* is shown at the right-hand side thereof as being separated by a clear space from the inside of the sectioned cap *b*, while at the left-hand side of the nut *j* the heavy shading by the draftsman on the inside of the sectioned cap *b* fills up this space. The rules of the Patent Office provide that in drawing the light 2115
shall be considered as coming from the upper left-hand corner; from which it results that the heavy shading is at the right-hand side of the figures, otherwise no doubt the same clear space would be shown at the left-hand side of the cap *j*, as is shown at the right-hand side.

An inspection of Fig. 2 of the Warriner patent shows that the diameter of the nut *j* is less than the cylindrical part immediately beneath it upon which the cap *b* fits in Fig. 1, herewith shown.

The claims of the Stone patent each calls for this less diameter of the nut than the bore of the cap to permit the latter to be

freely applied to and removed from the rear end of the barrel and this feature is clearly shown by Warriner.

By Mr. Bacon:

XQ14. Is it claimed? A. No. This feature of the smaller diameter of the nut is one which in my opinion is merely mechanical skill.

By Mr. Watson:

Q15. Do you find anything shown or claimed in the said Stone patent which is new or patentable over what is shown, described or claimed in the patent to Vale that you have described? A. I
2117 see nothing in it that calls for the exercise of the inventive faculty, and it could not, therefore, be patentable, in my judgment, over the Vale patent.

Q16. Do you find anything shown or claimed in the said Stone patent which is new and patentable over what was shown in the patent to Leutner which you have described? A. The same answer.

Q17. Do you find anything new claimed or described in the Stone patent which is new and patentable over what is shown in the patent to Warriner which you have described? A. The Warriner patent is substantially identical with the Stone patent, and I see nothing whatever in the Stone patent in the way of patentability over Warriner.

2118

CROSS-EXAMINATION by Mr. Bacon:

XQ18. The officials in Washington had all of these patents before them when they issued the Stone patent, didn't they? A. Presumptively they had.

XQ19. And it takes an action in equity to determine whether the Stone patent is good, or not? A. It might be tried at law as well, before a jury.

XQ20. You would not claim that the result of any such action would not be problematical? A. It ought not to be problematical.

XQ21. Does the official examiner in Washington, having all the patents before him, issue patents where there is no reasonable probability that they are good? A. I have seen a good many patents of that sort.

XQ22. You are a professional expert, are you? A. I suppose you might call me that.

XQ23. And you examined these patents before you came here, at the request of Mr. Watson? A. Yes.

XQ24. And he paid you for it? A. Not yet.

XQ25. You are in hopes to get better pay in proportion as your testimony is satisfactory; is that it? A. No, sir, it is nothing of that sort at all.

2120

XQ26. You expect to be paid liberally for what you have done? A. I expect to be paid what I agreed to take.

XQ27. How much did you agree to take? A. $25.

XQ28. And that is all your opinion is worth? A. It is worth more than that, I think, in some cases. I go something by the size of the case.

XQ29. Then the reason you made such a cheap price as $25 was because you knew that whether or not this was a good patent had nothing to do with this case? A. I had already given an affidavit in this case and which I wished at the time to make a great deal stronger than I did, which Mr. Watson did not think necessary to have made stronger, on the question of non-patentability.

2121

Mr. Bacon: Will the Commissioner kindly read the question?

(The last question is read by the Examiner.)

The Witness: I had more regard to the time; and besides I don't think the question is altogether clear.

XQ30. Is that the reason you answered entirely different questions the first two times? A. I was guessing somewhat at the meaning of the question, trying to answer what I supposed to be the point you were driving at.

2122

Mr. Bacon: Will the Commissioner kindly read the original question again, and I will ask the learned expert what he thinks it means?

(The Examiner reads the question as follows):

"Then the reason you made such a cheap price as $25 was because you knew that whether or not this was a good patent had nothing to do with this case?"

(The witness writes down the question as read by the Examiner.)

Mr. Bacon: The Commissioner will note on the record that the witness has had to take this question down in long hand and study it over so as to find out what it means.

2123

Mr. Watson: Counsel for complainant asserts that it appears on the record that the witness is justified.

The Witness: I think I will come back and ask to have the question set in intelligible form.

XQ31. I will ask the witness if he, as a graduate of the Naval Academy, and an expert patent lawyer, does not understand plain English? A. When it is plain, I do.

XQ32. I will ask him if that question is grammatical and perfectly plain—after an interval of three minutes on the record? A. I see no substantial meaning in the question.

XQ33. I will ask the learned expert if the question does not mean that he received such a low price as $25 for his services because the question that he was expected to elucidate had nothing to do with the issues in this case for unfair competition? A. I did not bother myself about what the issues were. It was the amount of time it would take me and the amount of work; but I did hear incidentally that there was something about trade-mark.

2124

XQ34. Is the validity of a patent properly at issue in an action about trade-marks? A. Not that I know of.

(Signature waived.)

2125

Plaintiff's counsel offers in evidence copy of United States Letters Patent No. 290,820, issued to W. Vale.

Marked Plaintiff's Exhibit 122.

Also copy of United States Letters Patent, No. 387,686, issued to I. Leutner.

Marked Plaintiff's Exhibit 123.

Also copy of United States Letters Patent No. 713,927, issued to E. W. Warriner.

Marked Plaintiff's Exhibit 124.

Mr. Bacon: I move to strike out the patents on the ground that it is hearsay and in no way connected with the defendant.

2126

Adjourned to Tuesday, April 11, 1911, at 10:30 A. M.

2127

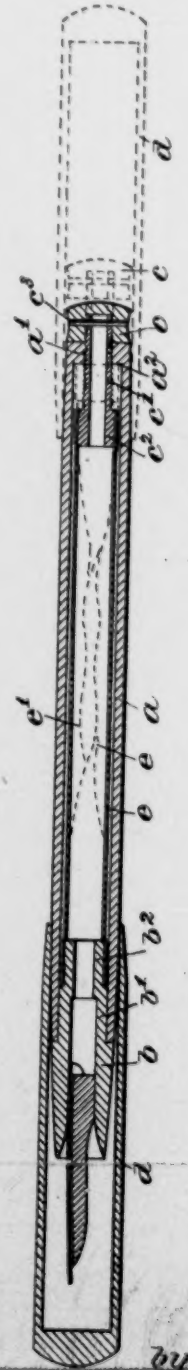
No. 744,642. PATENTED NOV. 17, 1903.

H. W. STONE.

FOUNTAIN PEN.

APPLICATION FILED FEB. 19, 1903.

NO MODEL.



Witnesses,

Inventor,
Harry W. Stone,

No. 744,642.

UNITED STATES PATENT OFFICE.

HARRY W. STONE, OF NEW YORK, N. Y., ASSIGNOR TO ARTHUR A. WATERMAN, OF WINCHESTER, MASSACHUSETTS, AND WILLIAM G. FRAZER AND HOBART W. GEYER, OF NEW YORK, N. Y.

FOUNTAIN-PEN.

SPECIFICATION forming part of Letters Patent No. 744,642, dated November 17, 1903.

Application filed February 19, 1903. Serial No. 144,031. (No model.)

To all whom it may concern:

Be it known that I, HARRY W. STONE, a citizen of the United States, residing in the city of New York, borough of Brooklyn, in the county of Kings and State of New York, have invented an Improvement in Fountain-Pens, of which the following description, in connection with the accompanying drawing, is a specification, like letters on the drawing representing like parts.

This invention relates to fountain-pens wherein a flexible sack within the barrel of the pen is used as an ink-reservoir.

The object of the invention is to provide a construction whereby the pen may be easily filled without soiling the hands and without the use of extraneous means, such as a dropper.

One form of my invention is illustrated in the accompanying drawing, in which *a* represents the barrel or body of the pen, and *b* the pen-stock proper, which is mounted in one end of the hollow barrel. This pen-stock is provided with a shank *b'*, which forms a friction-joint with the barrel. The part *b* is also provided with an extension or neck b^2, to which the flexible ink sack or reservoir *e* may be attached by any desirable means, such as wire or thread. This sack or reservoir may be made of a section of flexible rubber tubing or any other suitable material. The opposite end of the main barrel is provided with a screw-threaded bore a', which is of less diameter than the bore of the barrel, leaving an integral shoulder a^2 at this extremity of the barrel. Mounted in this bore is a screw-threaded shank c', having a neck c^2, similar to the neck b^2, upon which the opposite end of the flexible sack *e* is mounted. The outer end of this shank c' is provided with a knob or nut *c*, which is firmly secured thereto by any suitable means, such as a rivet c^3. The diameter of this nut *c* is somewhat smaller than that of the barrel *a* for a reason hereinafter set forth.

The device is also provided with a cap *d*, which may be slipped over the end of the barrel and which covers the pen when the latter is not in use and which may be transferred to the opposite end thereof when the pen is in use.

As will be seen from the drawing, the opposite ends of the barrel or body portion are somewhat tapered, and the pen-stock and the nut are correspondingly tapered in continuation thereof. The internal diameter of the cap *d* is larger than that of the pen-stock or the nut, and therefore engages the barrel of the pen when in position without contacting with either the pen-stock or nut.

When it is desired to fill the pen, the cap *d* is removed and the nut *c* is screwed to the left, thereby extending the same, together with the shank c' and the attached sack *e*, as shown in dotted lines, and at the same time distending the sack *e*, as shown in dotted lines *e* e'. This movement serves to collapse the sack and expel the greater part of the air therefrom. Upon now submerging the pen-stock *b* in ink and screwing the nut to the right or back into normal position the sack *e* will assume its normal distended condition, thereby drawing up a supply of ink by atmospheric pressure.

Should it be necessary from time to time to cause the ink to flow more copiously out upon the pen, this may be done by turning the nut *c* to the left slightly, thereby expelling a slight amount of ink from the reservoir of the pen.

When the pen is in use, the cap *b* may be removed from the pen and slipped upon the opposite end of the barrel, as shown in dotted lines. By reason of the fact that the nut *c* is tapered to a diameter slightly less than that of the bore of cap *d* it is obvious that it would be at all times impossible for the cap *d* to rotate said nut, and thereby accidentally agitate the ink-reservoir, when the cap is being placed upon or removed from the shank of the pen. This construction makes it practically impossible to accidentally cause the pen to spurt.

My invention is not restricted to the par-

ticular embodiment thereof herein disclosed, but obviously may be varied within the spirit and scope of the invention.

I claim—

1. A fountain-pen comprising a barrel, a cap adapted to cover the pen and also to fit over the rear end of said barrel, a flexible reservoir within said barrel, an exposed twisting member therefor at the rear end of said barrel and of less diameter than the bore of said cap, whereby the latter may be freely applied to and removed from the rear of said barrel without danger of turning said twisting member and twisting said reservoir.

2. In a fountain-pen, a barrel, a body portion having oppositely-tapered ends, a pen-point mounted at one of said ends and a cap adapted to fit over either tapering end of said barrel to cover the pen-point when the latter is not in use, and to be carried upon the rear end when the pen-point is in use, a flexible reservoir within said barrel or body portion, and an exposed reservoir twisting member at the rear of said barrel or body portion, and of less diameter than the bore of said cap to permit the latter to be freely applied to and removed from the rear of the said barrel or body portion without danger of turning said twisting member and its reservoir.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

HARRY W. STONE.

Witnesses:
ERNEST A. REED,
JUSTIN D. HANSCOM.

Plaintiff's Exhibit 122.

(No Model.) 2 Sheets—Sheet 1.

W. VALE.

FOUNTAIN PEN HOLDER.

No. 290,820. Patented Dec. 25, 1883.

FIG. 1

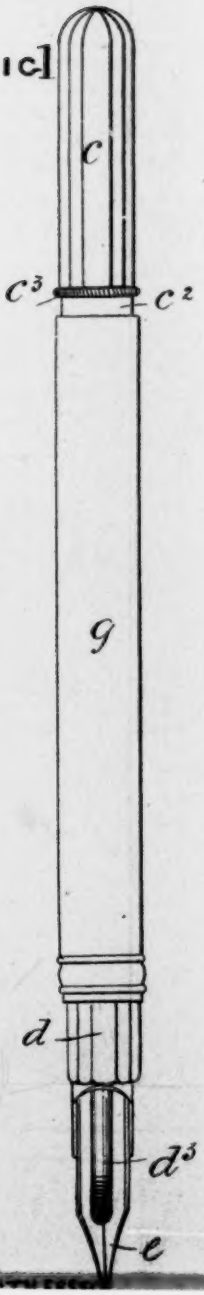


FIG. 2.

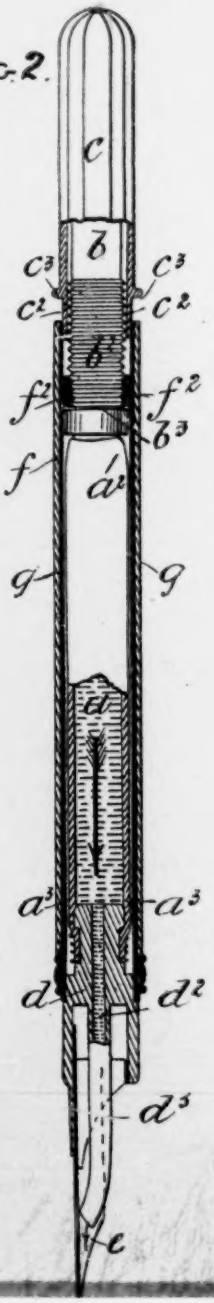
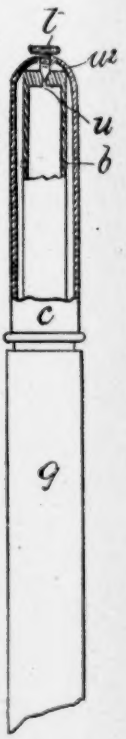


FIG. 3.

FIG. 3A



Witnesses

INVENTOR

W. VALE.

FOUNTAIN PEN HOLDER.

No. 290,820. Patented Dec. 25, 1883.

FIG. 4

FIG. 5

FIG. 6

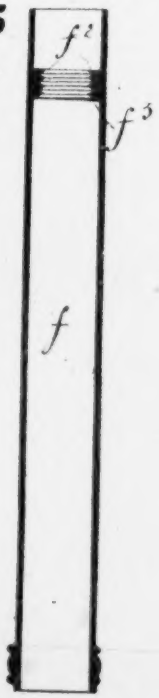


FIG. 7

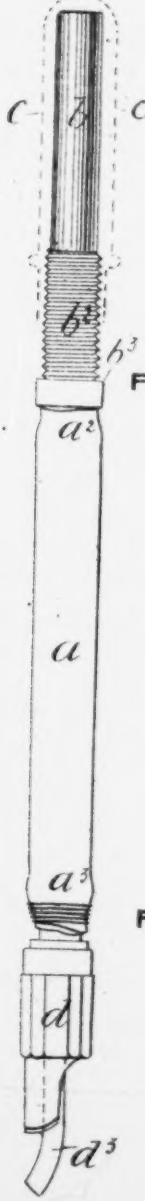


FIG. 8

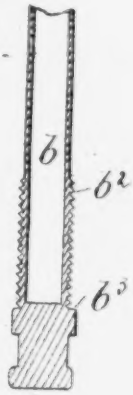


FIG. 9

FIG. 10

WITNESSES

Henry Skinrett,

Miles C. Hughes

INVENTOR

William Vale

COPY BOUND CLOSE

UNITED STATES PATENT OFFICE.

WILLIAM VALE, OF BIRMINGHAM, COUNTY OF WARWICK, ENGLAND.

FOUNTAIN PEN-HOLDER.

SPECIFICATION forming part of Letters Patent No. 290,820, dated December 25, 1883.

Application filed November 6, 1883. (No model.) Patented in England September 14, 1883, No. 4,401.

To all whom it may concern:

Be it known that I, WILLIAM VALE, a subject of the Queen of Great Britain, residing at Birmingham, in the county of Warwick, England, have invented certain new and useful Improvements in Reservoir or Fountain Pen-Holders or other Writing-Instruments, for which I have received Letters Patent in Great Britain, No. 4,401, dated September 14, 1883;) and I do hereby declare the following to be a full, clear, and exact description of the invention, reference being had to the accompanying drawings, which form part of this specification.

The object of my invention is to construct pen-holders or other writing-instruments containing a reservoir of ink or writing-fluid, which, by a slight rotary movement imparted to the terminal mount of the holder, causes a supply of fluid to flow to the nibs of the pen or writing-instrument, and on the reverse movement of the mount the writing-fluid instantly recedes again to the reservoir.

The reservoir or chamber for containing the writing-fluid consists, essentially, of an elastic or hollow cylinder composed of caoutchouc, india-rubber, or other suitable elastic material, the upper end of which said elastic tube or reservoir is connected to a short length of metal tubing (hereinafter called the "reservoir-mount") closed at its bottom. The said reservoir-mount has an external collar formed at its junction with the elastic tubular chamber, and immediately above the said collar the mount is wormed for a short distance with a slow-threaded screw, and above the wormed part is left plain.

To the lower end of the elastic reservoir the pen-holding mount is attached, and running in the axis thereof a small tube, bent at its end, conveys the writing-fluid from the reservoir to the nibs of the pen. A tubular casing or barrel, screwed internally at its upper end, incloses the elastic reservoir, and connects the top and bottom mounts. The internal screwed part of the barrel or casing takes into or engages with the screw of the reservoir-mount. The terminal cap for operating the reservoir covers and is attached permanently to the reservoir-mount, so that the operating terminal mount and the reservoir-mount described move together.

The action on propelling the terminal mount of the pen-holder is as follows: On the reservoir or chamber having been supplied with writing-fluid, on propelling the holder, the reservoir-mount is rotated, and advanced axially within the internal screw of the casing, so that the elastic or yielding reservoir is twisted spirally through its entire length to an extent dependent on the amount of propulsion. The effect produced by the twisting described is to reduce the capacity of the reservoir, and consequently to urge or drive forward the writing-fluid through the conveying tube or channel to the nibs of the pen, thereby supplying the said pen with an intermittent quantity of ink as the act of propelling is from time to time repeated. The motion of propelling is limited by the abutment-edge of the propeller-mount, and the repelling by a stop on the reservoir-mount coming against the shoulder of the screwed part in the inclosing case or barrel. On rotating the propeller-mount in the reverse way than that as before described, repelling is effected. The twisted and partially-contracted caoutchouc tube or elastic is uncoiled or straightened out, resuming its normal state, and in so doing the ink left in the pen (or for refilling the reservoir) instantly recedes or flows up the conducting-tube into the reservoir, as before described. Therefore the pen-holder or writing-instrument both propels and repels at pleasure.

I will now proceed to describe, with reference to the accompanying drawings, the manner in which the same is to be performed.

Figure 1 represents in front elevation, and Fig. 2 in side elevation, partly in longitudinal vertical section, a reservoir or fountain pen-holder constructed according to my invention, the reservoir being filled ready for use. Fig. 3 shows the same in action, the ink in the reservoir being forced therefrom by coiling spirally the chamber or reservoir, as represented. The other Figs. 3', 4, 5, 6, 7, 8, 9, and 10 represent the parts separately. Fig. 4 is the outer casing of the holder. Fig. 5 is an elevation of the propelling cap. Fig. 6

CLOSE IN CENTER

shows a section of the barrel inclosing the reservoir. Fig. 7 shows in elevation the reservoir with its top and bottom mounts. Figs. 8, 9, and 10 show in section the principal parts separately.

The same letters indicate the same parts in the above figures of the drawings.

a is the reservoir or chamber, composed of caoutchouc or india-rubber, for containing the reservoir of ink or writing-fluid. The upper end, a^1, of the elastic chamber or cylinder *a* is connected to a terminal mount, *b*, closed at its lower end. The mount is wormed externally with a slow-threaded screw, b^2. This reservoir-mount is connected permanently by soldering, or otherwise, to the terminal or operating cap *c*, so that this cap and the mount *b* move together when operating the pen-holder. The lower end, a^2, of the elastic reservoir *a* is connected to the pen-holding mount *d*, and in the axis of the said mount a tubular channel, d^2, communicates with the reservoir of ink, and through which said channel ink or writing-fluid flows to the nibs of the pen *e*. *f* is a tubular casing or barrel inclosing the elastic or yielding reservoir *a*, and connects the top mount, *b*, and bottom mount, *d*. The said inclosing barrel or casing *f* is screwed internally at f^1, which takes upon or engages with the screw b^1 of the mount *b*. The barrel *f* is surrounded by an external covering, *g*, of vulcanite or other suitable material.

In order to supply the pen with ink or writing-fluid, the action of the parts is as follows: The reservoir or chamber having been supplied with the necessary writing-fluid, on propelling the cap *c*, Fig. 2, the reservoir-mount *b* is rotated and advanced axially down the barrel *f* through a distance proportionate to the amount of propelling by b^2 of the mount *b* worming within the screw f^2 of the barrel *f*, and at the same time the cap *c* is lowered or advanced within the upper end of the barrel, in which end c^2 of the cap *c* slides, thereby diminishing the distance (as in Fig. 3) between the end of the barrel and collar or stop c^3, which limits the motion of the cap within the barrel, so that in consequence of the mount *b*, attached to the upper end, a^2, of the elastic or yielding chamber, having been turned or rotated several times by the propelling action of the cap (while the lower end, a^2, of the said reservoir is held stationary) it acts upon the elastic or yielding reservoir, so as to twist it spirally through its entire length, as represented in Fig. 3 of the accompanying drawings. The effect produced by the twisting described and represented is to reduce the internal capacity of the reservoir, and consequently to urge or drive forward the writing-fluid through the channel d^2, and conveying-tube d^3 to the nibs of the pen *e*, as shown at Fig. 3, and thereby supplying the said pen with an intermittent quantity of ink, as the act of propelling is from time to time repeated. The moving of the ink-reservoir, is limited by the abutment c^3 of the cap *c*, while the repelling is limited by the shoulder b^3 of the mount *b*, coming against the under side, f^3, of the screwed part f^2, of the inclosing-barrel *f*. On rotating the cap *c* in the reverse way than that as before described, repelling is effected. The twisted and partially constricted caoutchouc or india-rubber tube or reservoir *a*, as in Fig. 3, is uncoiled or straightened out, the parts resuming their normal positions, as represented in Figs. 1 and 2, and in so doing the ink left in the pen (or for refilling the reservoir) instantly recedes or flows up the conducting-tube by partially rarefying the reservoir by opening out its folds or coils and increasing its internal area, as shown in Fig. 1, so that ink at the mouth of the conducting-tube recedes up the said tube d^3 into the reservoir-chamber, as described. Therefore the pen-holder or writing-instrument both propels and repels at pleasure. The cap *h*, Fig. 4, covers the lower mount, *d*, when the pen-holder is not in use. When the flow of ink is required to be made continuous instead of intermittent, as before described, a small hole in communication with the reservoir is uncovered. The refilling is effected by temporarily stopping or closing the said hole in order to rarefy the interior of the ink chamber or reservoir by the raising of the point of the screw *t* out of the seat u^2 of the passage *u*, thereby admitting air to the ink-chamber and causing a continuous flow. On closing the mouth of the hole *u* by the point of the screw and repelling the mount, ink flows back into the reservoir for refilling or otherwise, as shown at Fig. 3^A.

Having described the nature of the said invention, I wish it to be understood that I claim—

1. In a fountain or reservoir pen, the combination, with the exterior casing and the stylus or point, of an elastic reservoir communicating with the said stylus and provided at its end with a movable plunger, whereby it may be compressed and its contents discharged upon or into the stylus, substantially as and for the purpose described.

2. In a fountain-pen, the combination, with an external casing and a stylus, of an elastic reservoir communicating with the stylus and adapted and designed to be twisted and its contents thereby discharged, substantially as described.

3. In a fountain-pen, the combination, with an exterior casing, of an elastic reservoir attached at one end to a stationary mount and at the other end to a movable mount swiveled in the casing, whereby the reservoir may be twisted and its contents discharged, substantially as described.

4. In a fountain-pen, the combination, with the exterior casing and the stylus, of an elastic reservoir communicating with the stylus and attached to a plug screwing into the upper end of the casing, substantially as described

5. In a fountain-pen, the combination of an elastic reservoir, attached at one end to a stationary mount and at the other to a screw-threaded mount, with a stop to limit its movement, substantially as described.

6. In a fountain-pen, the combination, with the exterior casing, of an elastic reservoir provided with a discharging-tube and adapted to be spirally twisted to discharge its contents through said tube, substantially as described.

7. In a fountain-pen, the combination, with the exterior casing and an elastic reservoir having an outlet at one end of said casing, of a movable plunger at the other end of said casing, adapted to impinge upon said reservoir and cause it to discharge its contents, substantially as described.

8. The combination of casing *g*, mount *d*, outlet-tube d^2, and elastic reservoir *a*, with the movable screw-threaded plunger *b* and cap *c*, substantially as described.

In testimony that I claim the foregoing I have hereunto set my hand this 15th day of October, 1883.

WILLIAM VALE.

Witnesses:
HENRY SKERRETT,
MILES E. HUGHES.

(No Model.)

I. LEUTNER.

RESERVOIR PEN HOLDER.

No. 387,686. Patented Aug. 14, 1888.

Fig: 1.

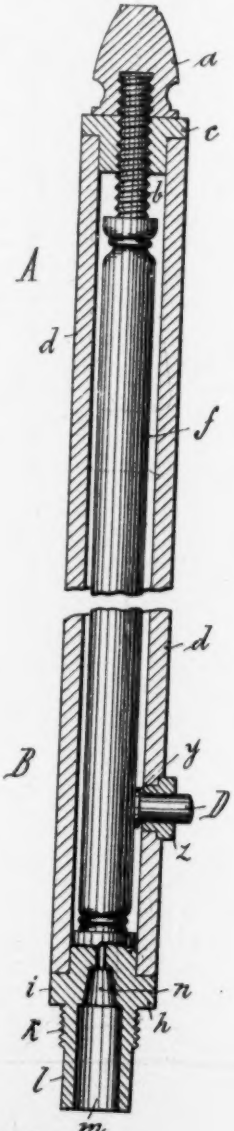


Fig: 5.

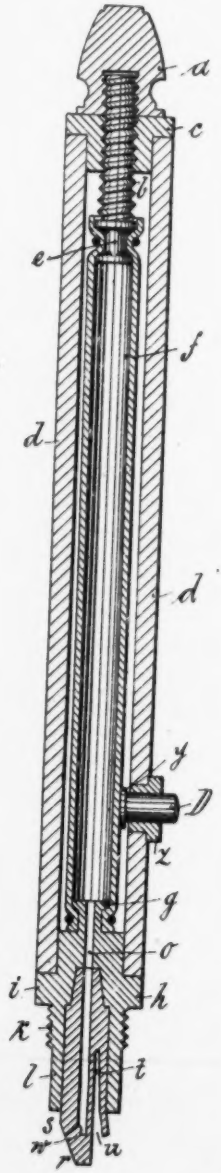


Fig: 2.

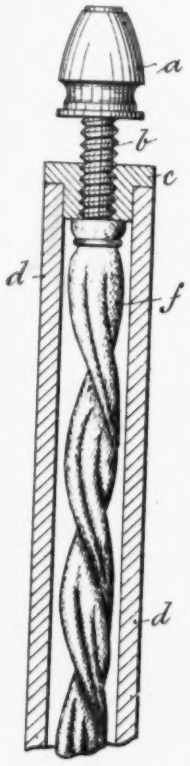


Fig: 3.

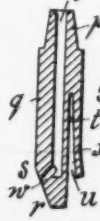
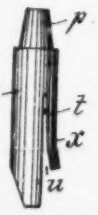


Fig: 4.



Witnesses.
C. Bowser.
A. R. Brown

Inventor.
Ignaz Leutner.
By Chas J. Gooch
Attorney.

UNITED STATES PATENT OFFICE.

IGNAZ LEUTNER, OF HALLE-ON-THE-SAALE, PRUSSIA, GERMANY.

RESERVOIR PEN-HOLDER.

SPECIFICATION forming part of Letters Patent No. 387,686, dated August 14, 1888.

Application filed May 10, 1886. Serial No. 201,712. (No model.) Patented in England March 29, 1886, No. 4,368.

To all whom it may concern:

Be it known that I, IGNAZ LEUTNER, of Halle-on-the-Saale, Prussia, Germany, have invented certain new and useful Improvements in Reservoir Pen-Holders, (for which a patent was issued to myself and another in Great Britain on the the 29th day of March, 1886, numbered 4,368,) of which I declare the following to be a specification.

This invention relates to improvements in reservoir pen-holders in which the ink-reservoir is located in the interior of the holder, and is composed of a closed tube of india-rubber or other appropriate water-tight elastic material.

Figure 1 is a broken longitudinal section of the holder, with the elastic reservoir in elevation, on an enlarged scale. Fig. 2 is a section of the upper part of the holder, with the knob screwed out and the elastic reservoir extended and put under torsion. Fig. 3 is a section of the clamp for holding the pen or writing-instrument, said clamp being inserted in the forward end of the holder. Fig. 4 is an elevation of Fig. 3. Fig. 5 is a longitudinal section of the complete holder.

The upper knob, *a*, is securely connected to the screw *b*, which runs through a suitably-flanged nut, *c*, which is inserted within and constitutes a stopper for the rear end of the cylinder or casing *d* of the holder.

The longer end of the screw *b* is provided with two suitable collars or flanges, between which the same is annularly recessed at *e*, so that the elastic reservoir *f* can be securely attached to the same by means of an elastic ring, or in other suitable manner.

The reservoir *f* consists of a piece of india-rubber tubing, which is, as aforesaid, attached securely to the forward end of the screw *b*. The forward end of the said reservoir *f* is attached to a stopper, *h*, provided with the flange and annularly recessed rear end, *g*. This solid stopper *h* is inserted in the forward end of the main tube *d* and protrudes a suitable distance into the interior of the same, so as to form a perfect closure, and also serve to retain the forward end of the elastic reservoir *f*, which is securely fixed to the annularly-recessed rear part, *g*, of the said stopper *h*, while the inward movement of the stopper is hindered by the flange *i*, which is of like diameter and runs perfectly flush with the main tube or cylinder *d*. This said stopper is furthermore provided with screw-threads to receive a suitable cap for protecting the pen or writing-instrument, and forward of these said screw-threads *k* with a plain annular surface, *l*, and is further provided with a boring of three various diameters, *o n m*.

The boring *o*, which can be reamed out somewhat at its rear end, is in communication with the elastic reservoir, and when the pen-clamp is inserted also with the boring *v* of the same, as will be described later on in this specification.

The boring *n* is made somewhat conical, to receive the conical end *p* of the pen-clamp, while the boring *m*, into which the part *q* of the said clamp is inserted, is made of cylindrical form.

The pen-clamp is preferably made of vulcanite, ebonite, or other similar material, and is at its rear end turned off, or so formed that the conical part *p* is obtained, which, as aforementioned, is fixed or inserted into the conical boring *n* of the stopper *h*, while the tongue *x* of the clamp serves to hold the part *q* securely in the cylindrical part *m* of the stopper.

The pen-clamp, or the part employed for holding the pen or writing-instrument, is provided with a central boring, *r*, corresponding with the boring *o* of the stopper *h*, which said boring *v* is in communication with a short canal or boring, *w*, which connects at the one end with the boring or canal *v*, while the other open end is formed in the inclined surface *r s* at the foremost end of the clamp, and beneath the pen or writing-instrument, which is inserted between the outer surface, *q*, of the clamp and the inner surface of the cylindrical boring *m* of the stopper.

A tapered slot, *t u*, is made at the rear of the boring *r*, so as to form a spring-tongue, *x*, which serves to hold the clamp *q* securely in the boring *m* of the stopper *h*.

D is a small pin or stud provided at its inner end with a suitable head or flange, *y*, and which passes freely through an ebonite, vulcanite, or other bushing, *z*, while the head or flanged end is in contact with the elastic reservoir *f*, so that if the reservoir is provided

with ink or writing-fluid and pressure is exerted on the outer end of the said pin or stud D the elastic reservoir will be compressed and ink or writing-fluid forced to flow into the pen or other writing-instrument.

In order to fill the reservoir *f* with ink or writing-fluid, the knob or button *a* is screwed out, and as the space in the interior of the main tube *d* is longer than the said reservoir the elastic tubular reservoir *f* is not only extended, but so twisted that the air contained in the said reservoir is expelled. This position of the knob or button *a* and the elastic reservoir *f* is represented in Fig. 2 of the accompanying drawings. The pen or writing-instrument is now inserted into writing-fluid until the canal or boring *w* is covered by the said writing-fluid, whereupon the knob or button *a* is screwed back again into contact with the flanged nut *c*, so much suction will be created that the reservoir will be entirely filled with writing-fluid, which, after withdrawing the pen and pen-holder from the fluid in the ink-stand or other receptacle, will be retained in the reservoir *f* by the pressure of the atmospheric air, and will only then be caused to flow from the boring *w* when pressure is exerted on the pin or stud D, the capacity of the reservoir thus decreased and the writing-fluid caused to pass from the same through the borings *o r w* to the pen or writing-instrument. The arrangement of the boring *w* at an incline to the boring *r* prevents too large a quantity of ink from flowing into the pen.

When not in use, a suitable cap can be screwed over the writing-instrument to prevent the same from being injured, for which said purpose the screw-threads *k* on the stopper *h* are employed. It will from the foregoing specification be evident to all connected with this branch of industry that the various parts of my improved reservoir pen-holder can be modified in various ways without in any way departing from the tenor of my invention.

Having now particularly described and ascertained the nature of my said improvements in reservoir pen-holders and in what manner the same is to be performed, I declare that what I claim is—

1. In a reservoir pen-holder, the combination, with a cylinder or casing having an ink-reservoir therein, of a stopper closing the front end of said tube and having a longitudinal ink-conveying passage communicating with the ink-reservoir and an outwardly-extending tubular portion, and a pen-clamp adapted to fit within said tubular extension of said stopper, and having a longitudinal ink-conveying passage, and at its outer end a transverse ink-conveying passage, and a spring-tongue adapted to hold said pen-clamp in position within said stopper, substantially as set forth.

2. A reservoir pen-holder comprising an open-ended cylinder or casing, a stopper closing the rear end thereof and having a threaded longitudinal bore therein, a screw extending through said bore and having a recessed and collared inner end and at its outer end an operating-knob, a longitudinally-bored stopper closing the front end of said casing and having an annularly-recessed inner end and an outwardly-extending outer end, an elastic reservoir connected at its respective ends with the inner ends of said screw and front stopper, a reservoir-compressing pin having a flanged inner end and extending transversely through an opening in the side of the casing and a pen-clamp seated within the outwardly-extending tubular portion of the front closing-stopper and having a spring securing-tongue and longitudinal and angular ink-conveying channels, substantially as set forth.

3. The combination of the cylinder or casing *d* and flexible reservoir *f* with the knob *a*, screw *b*, nut *c*, stopper *h*, clamp *q*, and the pressure-pin D, substantially as and for the purpose described in the specification, and shown in the accompanying drawings.

In witness whereof I have hereunto signed my name in the presence of two subscribing witnesses.

I. LEUTNER.

Witnesses:
MAX RESCHKE,
C. BORNGRAEBER.

Plaintiff's Exhibit 124.

No. 713,927. Patented Nov. 18, 1902.

E. W. WARRINER.

STYLOGRAPHIC OR OTHER FOUNTAIN PEN.

Application filed July 18, 1902.

(No Model.)

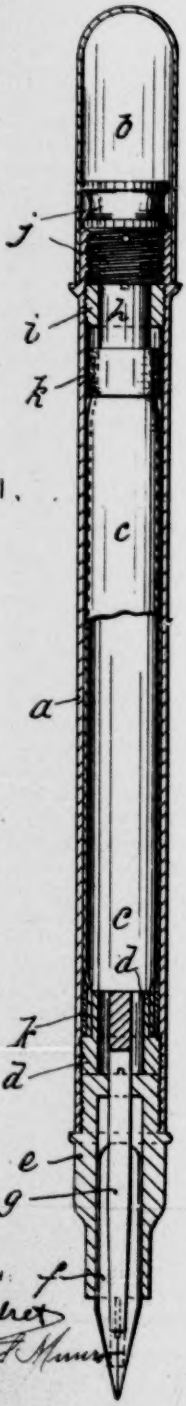


FIG. 1.

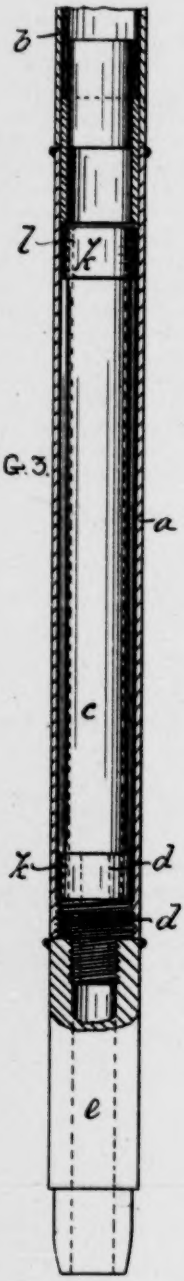


FIG. 3.

FIG. 2.

Witnesses:
Florence F. Munn

Inventor:
Edward W. Warriner,
By Wm. Wallace Mason
Attorney.

UNITED STATES PATENT OFFICE.

EDWARD WILLIAM WARRINER, OF SHEFFIELD, ENGLAND.

STYLOGRAPHIC OR OTHER FOUNTAIN-PEN.

SPECIFICATION forming part of Letters Patent No. 713,927, dated November 18, 1902.

Application filed July 18, 1902. Serial No. 116,030. (No model.)

To all whom it may concern:

Be it known that I, EDWARD WILLIAM WARRINER, a subject of the King of Great Britain and Ireland, and a resident of Attercliffe, Sheffield, county of York, England, have invented certain new and useful Improvements in Stylographic or other Fountain-Pens, (for which I have filed an application for British patent, No. 21,075, dated October 21, 1901;) and I do hereby declare the following to be a full, clear, and exact description of the same.

This invention relates to stylographic and other fountain-pens, and has for its object to avoid the necessity for any separate device for charging the ink-reservoir, and to this end is characterized by providing the pen with a collapsible and expansible ink-reservoir having means of coiling so as to collapse it to expel air therefrom and of uncoiling it or allowing it to uncoil to allow it to expand, so as when the nib-holder end is immersed in ink to become charged with the latter by atmospheric pressure.

On the accompanying drawings, Figure 1 represents a sectional elevation showing the expanded ink-charged or normal condition of the reservoir. Fig. 2 represents a like view at right angles to Fig. 1, showing the collapsed condition of the reservoir; and Fig. 3 represents a modification with the nib and ink-feeder removed.

a represents the body or holding part of the pen, and *b* a nib-protector which is interchangeably applicable to each end of the holder in a customary manner.

c represents the collapsible and expansible ink-reservoir, which preferably consists of india-rubber, but may consist of a bladder or other suitable impervious material, and extends from near one end of the holder, at which it is secured and its end is open, to near the other end of the holder, at which it is movable relatively to the holder and its end is closed.

Referring to Figs. 1 and 2, the secured end of the reservoir is vulcanized or cemented to a hollow ferrule *d*, which screws into the holder end and is firmly located by the nib-holder *e*, which carries the nib *f* and ink-feeder *g* and screws into the holder end into abutment with the ferrule, the ink-feeder projecting into and taking its supply from the hollow ferrule, which opens into the reservoir.

The movable end of the reservoir is vulcanized or cemented to a stem *h*, which works in a collar *i*, (which screws into and is adjustable in the holder end,) and beyond the collar is fitted with a turning head *j*, which screws into the holder end and projects beyond the latter sufficiently to be capable of being taken hold of and turned. The reservoir ends may be further secured to the ferrule *d* and stem *h*, respectively, by surrounding collars *k*.

When it is required to charge the reservoir with ink, the head *j* is turned with an unscrewing motion in the holder end, which causes the reservoir to twist, so as to collapse and expel any contained air, and upon the nib-holder end being immersed in ink and the head *j* reversely screwed the reservoir expands and the ink is forced thereinto by atmospheric pressure.

In the modification represented in Fig. 3 the secured end of the reservoir *c* is vulcanized or cemented to a hollow plug *d*, which screws into the adjacent ends of the holder *a* and nib-holder *e* or may be made integral with the latter. The end of the reservoir by which it is turned is stopped by a plug *l* and is free from any connection to the holder by which it is inclosed, so that upon the holder and reservoir-carrier *d* being disconnected the reservoir can be charged by twisting it and by untwisting it or allowing it to untwist while the nib-holder end is immersed in ink.

What I claim as my invention, and desire to secure by Letters Patent, is—

In combination, a holder, a collapsible and expansible ink-reservoir contained within the holder, a hollow ferrule secured within one end of the reservoir and adapted to screw into the holder at one end so as to secure the reservoir at such end, a nib and ink-feeder holder adapted to screw into the holder so as to lock the ferrule with the ink-feeder projecting thereinto, a stem secured within the other end of the reservoir and having a head

adapted to screw into the holder end and to project therefrom, and a collar adapted to screw into the holder end and to guide and limit the movements of the stem so as to control the collapsion and expansion of the reservoir, as set forth.

In testimony whereof I have signed this specification in the presence of two subscribing witnesses.

EDWARD WILLIAM WARRINER.

Witnesses:
EDWIN LISTER,
RALPH SKELTON.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

vs.

MODERN PEN COMPANY,
Defendant. 2192

Met pursuant to adjournment at the office of Watson & Raymond, 10 Wall Street, New York, April 11, 1911, at 10 o'clock in the forenoon.

Appearances:

Walter B. Raymond, for Complainant.
Alexander S. Bacon, for Defendant.

ERNEST LUTZER, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Raymond:

2193

Q1. Please state your name, place of residence and occupation? A. Ernest Lutzer; I reside at 173 West 81st Street, New York City. I am a merchant.

Q2. Will you state in your own words your experience, and the experience that you had in buying a fountain pen; tell us when you bought it, where you bought it, and what was said to you and what was said by the person selling the pen to you? A. I bought a pen about two months ago at 42nd Street. I don't know exactly where, whether it was between Madison Avenue and Third Avenue. I passed by a house and saw in the show window a sign. The sign said "Waterman Fountain

2194 *Ernest Lutzer*

Pens. Bargain Sale $1.25." For that reason I went in and asked the fellow if they were genuine Waterman fountain pens and he answered me that they were Waterman fountain pens and for that reason I bought one.

Q3. Was there anything said to you about how you could get the pen repaired? A. I asked him before I went out, if I had any trouble with the pen and should not be able to come in this neighborhood, and he told me, "You can drop in any of the fountain pen stores and they will fix it for you."

Q4. Did the pen work? A. No, the pen does not work. It is leaking all the time.

2195 Q5. What did you do? A. For that reason I passed by, downtown here, the real Waterman fountain pen store and I presented it to the lady in the store and she looked at the pen and she told me that is not our pen. So of course I was surprised to hear that. I thought I had the real Waterman pen. Then she sent for a gentleman, I guess it was the manager. I don't know the name of the gentleman.

Q6. When did this happen? A. Yesterday, about noon time, about half-past one I guess.

Q7. Is this the pen that you produce? A. That is the pen I bought, yes.

Q8. Will you read on that pen its marks? A. The pen is marked "A. A. Waterman & Co., New York. Patented December 12, 1899."

2196 Q9. Did the clip come on the pen? A. No, I bought that myself.

Q10. You bought that in the same place? A. In the same place, yes.

Q11. How much did you pay for that pen? A. $1.25.

The pen referred to is offered in evidence and marked Plaintiff's Exhibit No. 125.

Q12. Had you previous to the time that you purchased this pen ever known Waterman's pens? A. Yes, I knew of Waterman's fountain pens already in the old country.

Q13. How did you know of them—through advertisements? A. Through advertisements, yes.

Q14. Had you ever used any of them? A. No, I had never used any before.

Q15. But you had seen advertisements? A. Yes, I had seen advertisements. I have seen them myself in the old country.

Q16. Did you know the price at which the Waterman pens were sold? A. Yes, $2.50.

Q17. When you saw this sign of the bargain sale you thought you were getting something cheap? A. Yes.

CROSS-EXAMINATION by Mr. Bacon: 2198

XQ18. Was this pen repaired yesterday? A. They fixed it up a little bit. They took some tissue paper and cleaned it out.

XQ19. And that is all there was the matter with it? A. That is all.

XQ20. Did they tell you that the only thing the matter was that the section was not screwed on tight? A. No, they did not tell me anything about it. The gentleman that I spoke to said he would be very pleased if I could give testimony regarding this sale. I told him he should excuse me that I had an appointment at half-past two uptown and I could not be there at three o'clock.

XQ21. How much did they say they would pay you for testifying? A. I received $2.10. I received this paper. When I came home last night it was in my room. 2199

XQ22. You promised them to testify yesterday? A. Yes, I promised them.

XQ23. Did they promise you any sum of money at that time? A. No.

XQ24. Did they tell you how much they were going to pay you? A. Not at all.

XQ25. Do you claim that there is anything the matter with this pen now? A. Yes, it is leaking.

XQ26. Where is it leaking. Show us where it leaks? A. It was leaking all the time. It was leaking this morning. Mr. Watson here—

2200

XQ27. He tightened it up? A. Tightened it up.

XQ28. When you fill that pen you have to unscrew it near the pen? A. Yes.

XQ29. Then when you screw it back if you don't screw it clear down, it leaks? A. Yes.

XQ30. Would not that be true of any pen? A. Of course if I don't screw it tight, but I am strong enough to screw it pretty tight.

XQ31. Do you swear they charged you $1.25 for that pen? A. Yes, I can swear.

XQ32. Do you know who sold it to you? A. I don't know the gentleman personally.

2201

XQ33. Do you know the name of the place? A. No, I don't know the name of the place. I only know in that store there was a steam laundry in the rear. They have that place in the show window in the front.

XQ34. Didn't he tell you that the catalogue retail price of that pen was $1? A. No.

XQ35. He sold it to you for $1.25? A. Yes.

XQ36. And you don't know his name? A. No.

XQ37. And you don't know what man waited on you? A. No.

XQ38. You cannot exactly tell where the place was? A. I could not exactly say the number but if I would go there today I could find out easy where it is.

2202

XQ39. Well, I advise you to go there and get 25 cents back?

By Mr. Raymond:

Q40. Didn't I see some ink on your fingers where you were handling that pen? A. Yes.

By Mr. Bacon:

XQ41. You just unscrewed it didn't you? A. No, I didn't unscrew it. I just opened it a little bit.

XQ42. Opened it? A. No, I didn't open it. Just rubbed it.

XQ43. How long did they take in fixing it yesterday? A. It didn't take a minute. He didn't do anything with it. He only took some tissue paper and rubbed it.

XQ44. And screwed it on a little tighter? A. Yes.

XQ45. In other words, when you filled the pen— A. I could not say exactly whether they screwed it tighter.

XQ46. When you filled the pen you did not screw it down tight, is not that all there was to it? A. No, I don't believe so. I believe I am strong enough to screw it tight enough.

XQ47. Are you a German? A. Yes.

XQ48. What part of Germany do you come from? A. Saxonia. 2204

XQ49. How long have you been here? A. Five years.

XQ50. You understand English very imperfectly? A. I understand perfectly. I cannot speak very perfectly.

By Mr. Raymond:

Q51. Are you here in answer to a subpoena? A. Yes.

Q52. Is this the paper that you received (showing witness the paper)? A. That is the paper that I received.

Q53. And with that paper you received $2.10. A. $2.10.

Plaintiff's counsel offers in evidence the subpoena above referred to.

Marked Plaintiff's Exhibit 120.

Mr. Bacon: I object to cumbering the record with the subpoena. 2205

Deposition closed.

Signature waived.

FREDERICK BRICE IRVINE, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Raymond:

Q1. What is your name, residence and occupation? A. Frederick Brice Irvine; Hotel Narragansett; Civil and Mining Engineer.

2206 *Frederick Brice Irvine*

Q2. Are you here today in response to a subpoena? A. I am.

Q3. Will you state in your own words when, where and how you bought a fountain pen in Mexico City? A. The latter part of February of this year I was in Mexico City. I went into a stationery store on Avenue Sixteenth of September; that is one of the principal business streets there; about five or six doors from the American Club. In the direction of the Porters Hotel. It was an American stationery store. I asked the clerk for a Waterman pen. He showed and recommended to me a pen, a new patent, the name of which I do not remember. I
2207 repeated to him that I wanted a Waterman pen and he showed me several pens which I supposed were regulation Waterman pens, one of which I purchased. Here is the pen (producing a pen).

Q4. How is that pen marked? A. The pen is marked A. A. Waterman & Co., New York. "Automatic Self-Filling Modern."

Q5. Did you see the name on the pen at the time you purchased it? A. Yes, I saw the name Waterman on it.

Q6. How had you gained your knowledge of Waterman pens prior to this time; how familiar were you with the store on Broadway and Cortlandt Street? A. I had been there previously.

Q7. Did you at the time you purchased this pen in Mexico City think that you were buying a pen of the same manufacture
2208 as those that were sold at Broadway and Cortlandt Street? A. Yes.

Q8. What did you do when you came back to the United States? A. This pen is a self-filling pen and I went into the store there and asked them how it should be operated to the best advantage.

Q9. You went in thinking it was a pen of their manufacture? A. I did.

Q10. When did you go into the store? A. About three days ago.

CROSS-EXAMINATION by Mr. Bacon:

XQ11. How long have you had the pen? A. Since the latter part of February.

XQ12. Do you like it? A. I don't think I would buy another one of the same design.

XQ13. You have not had trouble with it? A. No particular trouble.

XQ14. It writes well? A. Yes, it writes well.

XQ15. And is easy to fill? A. Yes, it is easy to fill.

XQ16. Nice and clean, no ink in the joints, under the fingers? A. No. 2210

XQ17. No complaint to make at all? A. The pen operates satisfactorily in a way but the reason that I buy a Waterman pen is I know exactly what they are, the Waterman Ideal Pen; I know exactly what they are and I know they will be repaired at a very moderate rate if I break them.

XQ18. And they will not repair one of the other? A. I would not know where to go for it.

XQ19. And that is the only reason that you would not buy another? A. I know what the Waterman pen is and I do not know what this pen is.

XQ20. You have used it some months? A. Some months.

XQ21. You have carried it all the time? A. No.

XQ22. How long did you say you had had it? A. Since the latter part of February. 2211

XQ23. Of this year? A. This year.

XQ24. It never has given you any trouble at all? A. It did not seem to me that this pen held very much ink and I did not know whether I was filling it properly. In other words, it seemed to run dry very quickly. That was the reason I went into the Waterman store and asked to get the reservoir full.

XQ25. What did they tell you? A. They said it was not one of their pens.

XQ26. And they would not tell you how to screw that knob on the end? A. Yes, they did tell me and they filled the pen for me.

XQ27. And you are a civil engineer and you needed instructions as to how to fill a pen like that? A. Yes.

XQ28. Didn't they show you in Mexico City? A. I filled the pen in the office where I bought it.

XQ29. He did not show you how? A. He showed me how to turn it to the full extent of the spring but it did not seem to me that the reservoir lasted as long as it should.

XQ30. You don't know the name of the man that sold it to you? A. No.

XQ31. He told you it was an A. A. Waterman, didn't he? A. No, he told me it was a Waterman pen.

2213 XQ32. You said that you read the name on the barrel? A. I glanced at it. I saw the name Waterman. That was enough for me.

XQ33. You read English very well. You saw A. A. Waterman there? A. Undoubtedly.

XQ34. When you bought it? A. Yes.

XQ35. You knew that there was an Ideal? A. No, I didn't know that there were two; I never heard of it until I bought this pen.

XQ36. Are you willing to swear that he did not tell you that he was selling the A. A. Waterman pens? A. No, I would not swear to that.

XQ37. He might have told you? A. Might have told me.

2214 XQ38. How did you come to testify here? A. I came to testify in this way. I took this pen in here to learn whether I was using it to its highest efficiency or not, and they at once told me it was not one of their pens and asked me if I would testify.

XQ39. You don't know whether they had L. E. Waterman pens in Mexico City in this store or not, do you? A. No, I don't know.

XQ40. How old are you? A. Thirty-one.

Signature waived.

It is stipulated that the signatures of all the witnesses are waived unless other wise noted on the record.

Rebuttal 2215

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

vs.

MODERN PEN COMPANY,
Defendant. 2216

Testimony taken for final hearing on behalf of the plaintiff, in rebuttal, before Frederick M. Adams, an Examiner of this Court, on the 22nd day of April, 1911, at 11 o'clock in the forenoon, pursuant to notice hereto annexed.

Appearances:

Samuel S. Watson and Walter B. Raymond, for Plaintiff.
Alexander S. Bacon, for Defendant.

WALTER B. RAYMOND, a witness produced on behalf of the plaintiff, having been heretofore duly sworn, deposes as follows: 2217

Direct-examination by Mr. Watson:

Q1. Did you have any conversation with Asa A. Spear regarding the sale of any property of A. A. Waterman & Co., Frazer & Geyer Company, or the Modern Pen Company, or any of them? A. I did.

Q2. Did you hear the testimony of Mr. Spear in this case on behalf of the defendant? A. I did.

Q3. Did you represent or say to Mr. Spear in that conversation that you represented the L. E. Waterman Company? A. No, sir.

2218 *Walter B. Raymond*

Q4. What was said, if anything, in any conversation with Mr. Spear regarding the parties to the negotiation? A. We had draft contracts, and those draft contracts stated who we represented. I only stated, if I stated at all who I represented, I represented the Aiken-Lambert Company and the proposed Modern Pen Company of New York.

Q5. Did you represent the L. E. Waterman Company in those negotiations? A. No, sir, I did not.

CROSS-EXAMINATION by Mr. Bacon:

2219 XQ6. With whom did you first have any conversation with reference to the proposed negotiation for the purchase of A. A. Waterman Co.'s assets and name, representing the L. E. Waterman Co., or any one else; give us the name of the individual? A. The only person I ever talked to at all about the matter was Mr. Watson. I never discussed the purchase of the name with him at all.

XQ7. Did you ever talk with Mr. F. D. Waterman? A. Yes, I had a talk with Mr. Waterman.

XQ8. With relation to this purchase? A. Somewhat in relation to it, yes.

XQ9. What was that conversation? A. I told Mr. Waterman that I would not have anything to do with the negotiations in any manner, shape or form, if there were to be any negotia-
2220 tions they would have to be outside of me.

XQ10. That was in that year? A. Well, I do not know, I think that was way back in 1906 or 1907, when the matter was first broached.

XQ11. These draft contracts in evidence were prepared by Mr. Watson? A. Yes, sir.

XQ12. And there was not then and never has been any Modern Pen Company of New York? A. I do not know of any.

XQ13. And that was simply the name of a dummy corporation that was to be organized for the purpose of taking over those businesses? A. No, not a dummy corporation, a corporation.

XQ14. A mythical corporation not yet organized? A. No, not a mythical corporation, a proposed corporation.

XQ15. And who was to take the stock of that corporation? A. I do not know, it never got to that point.

XQ16. There is no question, is there, that the same people who owned L. E. Waterman Company also owned Aiken-Lambert Company at that time? A. No, sir, there are outside interests in Aiken-Lambert Company and there are not in the L. E. Waterman Company.

XQ17. Are there any outsiders except those who hold stock for the purposes of qualifying them as directors? A. Yes, I believe there is.

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XQ18. You are not certain of that? A. No, I never was an officer or director of the Aiken-Lambert Company and never had anything to do with its internal management. It has always been my understanding that there were outside interests in that, directly or indirectly.

XQ19. You have never represented the Aiken-Lambert Company? A. Yes, I have represented them, a lot of work for them.

XQ20. Are not the stockholders of the L. E. Waterman Company substantially the same as the Aiken-Lambert Company? A. No, sir.

XQ21. How much difference is there? A. I cannot tell you, I have not the stock books, but I know there are stockholders in the Aiken-Lambert Company that were not stockholders in the L. E. Waterman Company.

2223

XQ22. Are not their interests nominal? A. No, sir.

XQ23. Will you swear they are real, substantial interests? A. Yes.

XQ24. How much of the stock of the Aiken-Lambert Company is owned by the L. E. Waterman Company? A. I cannot tell you.

XQ25. A majority? A. I do not know.

XQ26. Some? A. I think so, I am not positive of it; I have not the books.

XQ27. Have you ever seen the books? A. No, I do not think I ever saw the books.

XQ28. Did Mr. Waterman or Mr. Ferris of the L. E. Waterman Company ever speak to you about the desirability of making this purchase? A. Why, at one time they spoke to me, that they were in the market to buy a lot of machinery for the Aiken-Lambert Company and about the same time some parties connected with the Modern Pen Company stated that they had a lot of machinery for sale. That is the way the negotiations arose in the first place, simply on a machinery basis.

XQ29. Nothing was said at any time about buying the name of the A. A. Waterman Company? A. No, sir.

2225

XQ30. You are sure of that? A. Yes, sir. It was mentioned at one time, but I took the position they did not have any trade name to sell.

XQ31. Who mentioned it? A. Mr. I. E. Chapman.

XQ32. Well, then, why did Mr. Watson put into each one of these draft agreements a very noticeable statement that they were to convey the name of A. A. Waterman & Co., and that they were entitled to use it? A. As I recollect that, Colonel, it came to a point where they wanted to throw in everything that they had in this proposed sale of the machinery, and Mr. Watson simply put in everything they had or claimed any right to so there would be no question as to what was conveyed.

XQ33. At that time did not the Aiken-Lambert Company

2226

have a full complement of machinery? A. No, sir, it did not.

XQ34. Did they want to buy some old second-hand machinery? A. It was not represented as old second-hand machinery.

XQ35. They did not care anything for the patents? A. Well, the patents were included, as I understand it, in those proposed contracts.

XQ36. They wanted nothing but machinery? A. The machinery was what they were after, yes, sir.

XQ37. Do you remember that they began to manufacture on one of the A. A. Waterman Co. patents, and that there was some correspondence between me and the L. E. Waterman people on that point?

Mr. Watson: Objected to.

A. I did not know anything of that.

XQ38. Didn't you know that they gave as an excuse for violating one of our patents that they expected to be the owner of it under those negotiations?

Mr. Watson: Objected to as not the evidence.

A. I did not know anything of that, Colonel. I never saw that correspondence until a long time afterwards; I did not know anything of it at all.

XQ39. What persons representing the defendant did you talk with? A. Mr. Spear, I. E. Chapman and W. L. Chapman. 2228

XQ40. Any one else? A. No, I do not think so.

XQ41. What persons representing the plaintiff did you talk with? A. I did not talk to anybody as representing the plaintiff.

XQ42. Did you talk with Mr. Watson? A. I spoke to Mr. Watson.

XQ43. Who else, what other individuals? A. I think Mr. Ferris spoke to me about it.

XQ44. What did he say? A. I do not recall, except it was something about wanting to look at the machinery, or something of that kind.

XQ45. Is there more than one Waterman connected with the plaintiff? A. Yes, sir. 2229

XQ46. What are their names? A. Well, there is F. D. Waterman, president, there is Lewis E. Waterman, the vice-president, there is Fred S. Waterman, I think he is assistant treasurer there now.

XQ47. What relationships do they bear to one another? A. F. D. Waterman and Fred S. Waterman are brothers and nephews of Lewis E. Waterman, the founder of the company, and cousins of Lewis E. Waterman, the vice-president of the company, who was a son of the founder of the company. There is Mrs. Waterman, Mrs. Sarah D. Waterman.

XQ48. The widow? A. She is the widow.

2230

XQ49. Which one of these Watermans did you talk with? A. I talked with Mr. F. D. Waterman, I think that is all. I think L. E. Waterman, or Junior, as they call him, said something at one time about it, but he is on the road most of the time.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ50. In your talks with Mr. Ferris, was he representing the L. E. Waterman Company, or the Aiken-Lambert Company? A. The talks were solely in reference to supplying the Aiken-Lambert Company with machinery.

2231

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ51. What was the exact conversation about that? A. Why, he said they had taken over, that he was interested in this Aiken-Lambert Company, I think he said he was their manager, and that they were talking over a new line of pens, going to make a new line of pens, and that they were going to enlarge the old Aiken-Lambert factory and put out this line of cheap pens and put them out very extensively, and that they wanted a lot of machinery to do it.

RXQ52. Was anything said about machinery for Canada? A. No, not at that time.

2232

RXQ53. At any time? A. I think at one time there was some talk about buying machinery for another company up in Canada.

RXQ54. The L. E. Waterman Company, Limited? A. The L. E. Waterman Company, Limited.

RXQ55. And they did not know where they wanted this machinery for, is that it? A. No, those were two distinct times, Colonel, a year or so apart. First off it was solely on the Aiken-Lambert Company.

RXQ56. When did the L. E. Waterman people take over the Aiken-Lambert Company? A. You have got me on dates; I think it was sometime between 1906 and 1908, somwhere around in there.

RXQ57. When did they institute their Canadian factory? A. I do not know.

Deposition closed.

Signature waived.

SAMUEL S. WATSON, a witness called on behalf of the plaintiff, being duly sworn, deposes as follows:

Direct-examination by Mr. Raymond:

2234

Q1. Please state your name, age, residence and occupation? A. My name is Samuel S. Watson, and I live in New York City, and I am attorney for the plaintiff herein, and am a practising lawyer.

Q2. Did you ever have any conversation with Mr. Ward D. Williams? A. Yes.

Q3. Did you hear the testimony of Mr. Ward D. Williams at yesterday's hearing in this case? A. Yes, sir.

Q4. Now, will you state in your own words as nearly as you can, the conversations which you had with Mr. Williams? A. I could only state in substance the conversations at this time. I did not recognize Mr. Williams when I first saw him yesterday on the stand, although I recall the interview. I did not recognize the man; I think he must have changed considerably since then. He came here with the drafts of the contracts which had been prepared and the talk was as to the terms of the transfer that was being discussed, largely pertaining to the form of the contract.

2235

Q5. Did you at any time tell him whom you represented? A. The drafts of the contracts that he had showed the parties, and I remember no conversation as to who I represented, or that that matter was discussed at all.

Q6. Did you tell him that you represented the L. E. Waterman Company, or the Watermans, and that they were purchas-

2236

ing property that was described in the contract? A. I am sure I did not, because that was not the fact.

Mr. Bacon: I ask that the cross-examination be suspended until some future hearing, as I have certain exhibits that I want to produce.

Adjourned to Tuesday, April 25, 1911, at 11 A. M.

UNITED STATES CIRCUIT COURT,

2237

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY, Plaintiff,

vs.

MODERN PEN COMPANY, Defendant.

Met pursuant to adjournment at the office of Watson & Ray-
2238 mond, 10 Wall Street, New York, April 26, 1911, at 11 A. M.

Appearances:

Samuel S. Watson and Walter B. Raymond, for Plaintiff.
Alexander S. Bacon, for Defendant.

SAMUEL S. WATSON, resumes the stand.

Cross-examination by Mr. Bacon:

XQ7. Is it not a fact that the name Aiken-Lambert was not introduced into these negotiations for the purchase, until about

December, 1908? A. I could not say when the name actually came out, Aiken-Lambert; I don't remember.

XQ8. The negotiations began early in 1907, did they not? A. They began and were, you might say, immediately broken off. The negotiations—by reference to my letter, to refresh my recollection—began, as far as my personal knowledge of them is concerned, with these letters which I had here at my office in April, 1907, with Isaac E. Chapman.

XQ9. Then they were immediately broken off, were they? A. Yes.

XQ10. And renewed again in 1908, when this correspondence took place, already in evidence? A. There may have been something in between, but I do not recall just what happened. There 2240
was correspondence; the two letters were written by me, copies of which I now produce, to Isaac E. Chapman, and mailed to him in due course, April 18, 1907, and April 20, 1907. I do not recall that there was any negotiation after that for some time, although there may have been.

XQ11. Did you submit this paper, containing three options, for the payment of the purchase price on this attempted purchase (showing witness the paper)? A. I don't remember whether I did or not. I do not remember doing it. I may have done it.

XQ12. Such an option must have come from you; it could not have come from us, could it? A. As to that I don't know. I have no recollection now of ever seeing any of this stuff before. I have seen these printed certificates but not in connection 2241
with this matter. I know that there was talk about what we call credit certificates. I do not recall that paper.

XQ13. Do you remember the substance of the paper, that it contained three options, to wit, by cash February 1, 1908, $10,000; by note due May 1, 1908, $5,000; by note due August 1, 1908, $10,000; with a 60 day renewal privilege, 5 per cent interest during such period. Was there any such option as that? A. Not that I know of. There was never at any time any option that I ever heard of. The fact is that the parties never got to a point of agreement at all, as far as I know. All of the propositions or negotiations, or whatever you choose to call it,

were tentative and never at any time reached what would be called an option or an agreement to that effect.

XQ14. Was there a second option, as follows: "Or pay the amount of A. L. Company's certificates;" followed by a copy of Aiken-Lambert Company's blank certificates such as I now show you (handing witness a paper)? A. I don't know that I understand what you mean by an option. Do you mean that that was the option that was given to me to submit to my client or do you mean an option, an offer, on the part of my clients to buy?

XQ15. I mean according to this paper there were three options submitted by you to the Chapmans; one, cash and notes
2243 as already read; two, payment in Aiken-Lambert Company's certificates; three, payment in A. A. Weekes-Hoskins Company, Broadway, New York, preferred seven per cent stock? A. In answer to that I can say that there was never any option or definite offer made by me at any time; that the offers, so-called, were merely tentative propositions to see if a ground could be agreed upon; that they were all tentative and never had been agreed to by anybody, but were merely bases for negotiations which I hoped would result in some agreement. No agreement was ever reached.

XQ16. Do you know the fact that F. D. Waterman presented this paper to Mr. Chapman, containing three options; one, cash and note; two, Aiken-Lambert's certificates; three, payment of
2244 A. A. Weekes-Hoskins Co. preferred seven per cent stock? A. I have no personal knowledge of it at all.

XQ17. Is it not a fact that an offer of $25,000 was agreed upon and then it came to be simply a question of how this should be paid, either in cash and notes, in Aiken-Lambert's certificates or A. A. Weekes-Hoskins Co. preferred seven per cent stock? A. No, I don't think that there was any agreement or offer of the nature you mention. There was an understanding between Mr. W. L. Chapman and myself that that price would be agreeable to him and that he was going to secure the assent of the sellers and that I told him that I did feel reasonably positive

that I would be able to secure the consent of the buyer, but that is as far as that proposition ever got.

XQ18. Don't you remember that Mr. Chapman rejected the tender of Aiken-Lambert's certificates and of A. A. Weekes-Hoskins Company preferred stock? A. They never accepted it; that is true. I don't say they rejected it. There was a good deal of talk about the thing and about all these things. That negotiation extended over a long period of time. There were a good many talks and tentative offers, if you choose to put it that way, and talk about various ways of paying or taking over the property, but there was never any agreement reached by any of the parties. 2246

XQ19. Is it not a fact that A. A. Weekes-Hoskins Co. failed shortly after this offer was rejected? A. As to that I do not know. I think they failed some time, but when or how long after, I do not know. I have no personal knowledge of when they failed or that they actually failed, if at all.

XQ20. Will you tell us about the strike that is now going on in the factory of the L. E. Waterman Company; is it a strike for higher wages? A. It is the first time that I have heard that there was any strike. You surprise me to say that there is one.

XQ21. Don't you know that there has been a strike going on for some little time? A. I never have heard of it before.

XQ22. Were you aware of the fact that Mr. F. D. Waterman swore to a complaint in Milan, Italy, wherein he stated that 2247 there was no such firm doing business in New York as A. A. Waterman & Co.? A. No.

XQ23. You knew there was such a firm, didn't you? A. I have no personal knowledge except what I have learned in this suit, as to the actual existence of the firm. I have never been in their place. I have never seen their sign. I have heard that there was such a firm, yes.

Mr. Bacon: I call for the production of checks signed Aiken-Lambert by Mr. F. D. Waterman, treasurer, to the order of A. A. Waterman & Co.; dated April 17, 1907,

May 10, 1907, July 26, 1907, October 5, 1907, October 30, 1907, February 7, 1908, July 8, 1908, March 19, 1909, September 11, 1909, April 14, 1909,—on or about those dates.

A. Those checks are not in my control or in the control of the plaintiff.

XQ24. Is not the Aiken-Lambert Company in the control of the plaintiff? A. It is a separate corporation.

XQ25. Does it not own a majority of its stock? A. I think it does, directly or indirectly. As to that I have no personal knowledge.

2249 XQ26. And does it not have substantially the same officers in the L. E. Waterman Company and Aiken-Lambert Company? A. No, I think not. There are five directors in the L. E. Waterman Company and I think there are seven directors in the Aiken-Lambert Company. There are only two of those persons that hold office in both companies.

XQ27. F. D. Waterman is an officer in both? A. Yes.

XQ28. And Mr. Ferris is an officer in both? A. I am not sure about Mr. F. D. Waterman, but I believe he is. He has been, but whether he is at present or not I don't know.

XQ29. Mr. Ferris is an officer in both? A. I believe he is, yes.

Deposition closed.

2250 Signature waived.

Mr. Raymond: I offer in evidence the two letters referred to by Mr. Watson, dated April 18th, 1907, and April 20th, 1907, addressed I. E. Chapman. These letters were duly mailed and stamped in a sealed envelope addressed to I. E. Chapman, Whitehall Building, New York.

Mr. Bacon. Objected to as immaterial and irrelevant, not having been received.

Marked Plaintiff's Exhibit No. 142.

Plaintiff's Exhibit 142 2251

Mr. Bacon: I waive objection to the competency of the circulars or any other matter that is contained in the printed book.

The following are the letters referred to by Mr. Watson, in his deposition:

Exhibit 142.

(Letter-head of Watson & Raymond.) 2252

New York, April 18 1907.

I. E. Chapman, Esq.,
Whitehall Building,
New York, N. Y.

Dear Mr. Chapman:

Pursuant to your request the writer has taken up the matter of the Modern Pen Company and A. A. Waterman & Co. with our clients and the matter has been carefully considered at length, and we regret to report to you that there appears to be no prospect whatever of effecting any arrangement. Our clients state to us that the conclusion of their consideration of this matter is that they cannot now use the above mentioned concerns with advantage; they state to us that they might use the 2253
tools and machinery but could not use to advantage any other property of the concerns, and that if you desire to dispose of the tools and machinery alone they would be willing to consider their purchase; the balance of the property of the two concerns do not appear to interest them at all.

We are of the opinion therefore that unless you care to dispose of the tools and machinery alone that further negotiations would be useless.

Very truly yours,
WATSON & RAYMOND.

SSW/AL

2254

(Letter-head of Watson & Raymond.)

New York, April 20, 1907.

I. E. Chapman, Esq.,
Whitehall Building,
New York, N. Y.

Dear Mr. Chapman:

Since my conversation with you over the telephone last evening, I have earnestly thought over the matter of the Modern Pen Company and A. A. Waterman & Co., and am at a considerable
2255 loss to know just how to re-open the negotiation, in as much as our clients expressed themselves quite positively that the matter did not interest them. Upon inquiry we find that the memoranda formerly furnished us respecting the assets of the two above mentioned concerns have either been mislaid or lost. If you would furnish us with another memorandum showing the approximate assets of the concerns and indicate the basis on which you are prepared to deal, this would pave the way to re-opening negotiations.

Yours truly,
SAMUEL S. WATSON.

SSW/LS

2256

WILLIAM I. FERRIS, recalled on behalf of the plaintiff:

Direct-examination by Mr. Watson:

Q1. You have testified that you have charge of the pen factory of the plaintiff? A. I do.

Q2. What kind of iridium does the plaintiff use in the manufacture of its gold pens? A. Native, hard iridium.

Q3. Have you never used what is commonly called in the market or in the trade soft iridium? A. We have not.

Q4. When you have purchased pens from other factories were these pens always made under your supervision or direction? A. They were.

Q5. And what kind of iridium did you have used in the manufacture of pens which you obtained from outside factories? A. We always insisted on hard points.

Q6. Hard iridium points? A. Hard iridium points.

CROSS-EXAMINATION by Mr. Bacon:

XQ7. Do you mean to say, Mr. Ferris, that your pens that sell for $2.50 have never been pointed with manufactured or soft iridium? A. I do. 2258

XQ8. All through the years? A. Yes.

XQ9. Do you mean to say that you have got in your whole factory including Aiken-Lambert and the L. E. Waterman forces, half a dozen grinders who are competent to grind native iridium? A. I do.

XQ10. How many such grinders have you? A. All of them.

XQ11. How many of them are there? A. Seventy grinders; I think in the neighborhood of seventy grinders altogether.

XQ12. Is it not a fact that some of those grinders are very young men and boys? A. Some of them are young men.

XQ13. Some of them are girls? A. No.

XQ14. Some of them would be called grinders? A. Some apprentices. 2259

XQ15. How many of them are apprentices? A. At the present time very few that have not been at the business for several years. I may add that any pens that are ground or worked on by apprentices are always inspected by the older or experienced pen makers.

XQ16. How long have you been manufacturing pen points at all—the L. E. Waterman Company? A. Making gold pens?

XQ17. Making gold pens? A. About ten or eleven years.

XQ18. Do you mean to say that you still make all of the gold pens that you use in your fountain pens? A. No, as I previously testified, we have some made outside.

2260 *William I. Ferris*

XQ19. By whom? A. A few made by M. T. Horn and a few made by Fairchild.

XQ20. Anybody else? A. Not at the present time.

XQ21. How long ago did you have your gold pens made by other people than those just named? A. We discontinued entirely in the last year or two; and for the previous years we gradually grew less until there are only a very few made later.

XQ22. By whom were they made? A. Some made by Mabie, Todd & Bard, and some by Armeny & Marion.

XQ23. Are those the only people that you buy from? A. Yes, those are the only people I recall.

XQ24. There is a strike now going on in your factory? A. 2261 No.

XQ25. There has been very recently? A. Not in the gold pen factory.

XQ26. In the fountain pen factory? A. A little in the assembling department.

XQ27. Is that now going on?

Mr. Watson: Objected to as immaterial to any issue in this case.

A. No, sir.

XQ28. The strike is now on? A. No, sir.

XQ29. When did it stop? A. Some of the young men that were connected with the work left and they came back in three 2262 or four days at the most; some of them were away; there were one or two that we did not care to take back.

XQ30. How long ago was this? A. It all occurred in the past week.

XQ31. How many do you have in your assembling department? A. In what we call the assembling department. I think there are in the neighborhood of forty people altogether. That is, they do various things in connection with assembling.

XQ32. Some of them are girls? A. They do the labeling.

XQ33. Some of them are boys or very young men? A. No young men men under sixteen years of age.

XQ34. How many between sixteen and twenty-one? A. I cannot tell.

XQ35. About?

Mr. Watson: Objected to as entirely immaterial to any issue in this case and the counsel for plaintiff moves to strike out all this testimony as unnecessarily padding the record.

A. There may be a dozen or more. A great many of them are errand boys and do miscellaneous work about the room.

XQ36. How many of the assemblers are expert men who make, say $25 a week, or upwards? 2264

Mr. Watson: The same objections.

A. All of them are experts that finally pass on the pens.

XQ37. How many of these sixty or seventy assemblers are experts who make $25 a week, or upwards? A. Not sixty or seventy assemblers.

XQ38. How many assemblers are there? A. I believe I stated in the neighborhood of forty in the room altogether, in the assembling room.

XQ39. How many assemblers?

Mr. Watson: The same objection and motion.

XQ40. How many expert assemblers who make $25 a week or upwards? A. I do not say that there are any. 2265

XQ41. How many are expert assemblers? A. All of them that finally pass on pens.

XQ42. How many are they? A. I should say a dozen or fifteen.

XQ43. And all the rest of them are denominated non-experts, are they, of those forty? A. No, they are experts in assembling, but the more skilled, or the ones that work in the department that we call the inspection department, they finally pass on pens so that there is no possible chance of any going out that are not in first class shape.

XQ44. How many in the so-called inspection department? A. In the neighborhood of a dozen.

XQ45. Did you know as a fact that Mr. F. D. Waterman swore to the complaint in Milan, Italy, that there was not any such firm doing business in New York as A. A. Waterman & Co.? A. I do not.

XQ46. You do know that there is such a firm? A. It is the defendant in this case.

XQ47. You have known that for many years, have you not? A. I have known of the existence of the name, but understand that there have been many changes one way and another in the firm.

2267 XQ48. Don't you know that Mr. F. D. Waterman, in 1907 to 1910, as Treasurer of the Aiken-Lambert Company, sent a dozen or more checks to the order of A. A. Waterman & Co.? A. I do not.

XQ49. Don't you know of any such checks? A. Not to my personal knowledge.

XQ50. Have you ever heard of them? A. The A. A. Waterman & Co.?

XQ51. Yes, checks to the order of A. A. Waterman & Co., signed by F. D. Waterman? A. I don't know whether I have; may be possibly that it has happened though. I believe they have had some repairs which may have been sent to them.

XQ52. These were checks for repairs? A. I don't know as
2268 to that. It is possible.

XQ53. How many floors of your factory are devoted to the manufacture of gold pens by the L. E. Waterman Company? A. Three floors in the pen making proper and a four floor in the assembling.

XQ54. Is that devoted exclusively to L. E. Waterman work or in part to Aiken-Lambert Co. work? A. There may be some nibs made for Aiken-Lambert.

XQ55. Do the Aiken-Lambert Company make any nibs there at your factory? A. Not now.

XQ56. Then that is a joint factory of Aiken-Lambert and L. E. Waterman Company? A. No, it is the factory of L. E. Waterman Company.

XQ57. Do Aiken-Lambert Company have any factory of any kind outside of this factory that you call L. E. Waterman's? A. They have a rubber factory and a pencil factory.

XQ58. What do they make in the rubber factory? A. They make rubber holders that they use.

XQ59. But everything else that they make they make in your factory? A. I don't understand just what you mean by that.

XQ60. What do they manufacture? A. They make fountain pens. Do you mean the whole manufacture?

XQ61. Yes? A. They manufacture the rubber holders, the mountings, silver pencils, novelties, etc.

XQ62. Where are the novelties made? A. Made in their 2270
pencil factory.

XQ63. Where are the Aiken-Lambert gold pens made? A. Some of them are made in our factory, the Waterman factory. I believe they have some made outside.

XQ64. Do you make a good many pens in the Waterman factory that are not marked Waterman or Ideal? A. Very few.

XQ65. How are they marked? A. Some are marked for the Aiken-Lambert Company with their name.

XQ66. Any other name? A. There may possibly be some other name. Some pens are stamped "14 karat."

XQ67. Then the Aiken-Lambert Company has gone out of the pen point business? A. The manufacture of gold pens. 2271

XQ68. They have gone out of that business? When did they go out? A. Last year, 1910.

XQ69. They had been gradually giving up their manufacture of gold pens some time before that A. No, their factory continued on about the same that it had for several years.

XQ70. Did you in 1909, as manager of the Aiken-Lambert Company, have any intention of increasing the plant of the Aiken-Lambert Company with more machinery, for the making of gold pens? A. Not to my recollection.

XQ71. Did you during the year 1908? A. In the early years when I had charge of the factory we increased it over what it had been running for years previous to that.

2272 *William I. Ferris*

XQ72. When was that? A. That is three or four years ago.

XQ73. You did not have any such intention in 1907, 1908 and 1909? A. I think 1907 would be about the early part of it.

XQ74. Did you have any such intention in 1908? A. The condition was about the same. Most of this change was made when I was first connected with it.

XQ75. When was that? A. The first year. I think it dates three or four years back.

XQ76. Can you tell whether it was as early as January, 1907, when you first went there? A. I cannot state definitely as to that.

2273 XQ77. As late as December, 1908, did you want any more machinery for Aiken-Lambert? A. Not for the gold pen department.

XQ78. Did you want more machinery in December, 1908, for the pen holder department, manufacturing rubber holders? A. It is possible we could use more then.

XQ79. Did you as a representative of Aiken-Lambert attempt to buy machinery for the manufacture of gold pens or rubber holders, owned by the Modern Pen Company or A. A. Waterman & Co., in December, 1908? A. I don't remember the exact date. I remember of looking at their machinery.

XQ80. What was that to be used for,—the Aiken-Lambert factory? A. In connection with our Canadian factory.

2274 XQ81. And not Aiken-Lambert? A. Not principally. We might have used a very little of it there.

XQ82. But you did not want it very much did you—that machinery? A. We could have used it at the time.

XQ83. You could use it now or at any time couldn't you? A. I don't know. We don't have need for it. We store it but that is not putting it to a good use.

XQ84. Is it not a fact that in December, 1908, you did not have any particular use for an increased amount of machinery either in the manufacture of gold pens or holders? A. I don't recollect the exact time. There was a time when we could use machinery in connection with our Canadian plant but as to that

being the exact date, I don't just remember without looking it up.

XQ85. But you did not want any for the New York plant, either L. E. Waterman Co. or Aiken-Lambert? A. Very little.

XQ86. Did you have anything to do with the negotiations for the purchase of the Modern Pen Company and A. A. Waterman & Co.? A. I looked at the work.

XQ87. And you consulted with Mr. F. D. Waterman? A. At his suggestion I went there and looked it over.

XQ88. Did you have any talk with Mr. Watson? A. I believe I did.

XQ89. Is it not a fact that what you wanted was the trade name more than you did the machinery? A. No, that would have been of no use to us. 2276

XQ90. Didn't you start to manufacture pens under one of our patents and then discontinue it when we called your attention to it, stating that you expected to become an owner or licensee? A. I don't recollect anything of the kind.

XQ91. Is it not a fact that what you wanted to do was to buy the trade name so as to have the name Waterman all to yourself? A. No, we had the name Waterman before.

XQ92. Was not that one of the principal assets that you were buying, or attempting to buy? A. No, we were interested, as I said before, in the machinery to use in connection with our Canadian plant, principally.

XQ93. Was there any Modern Pen Company of New York organized in connection with the Canadian plant? A. Not to my knowledge. 2277

XQ94. Did Aiken-Lambert have anything to do with the Canadian plant? A. No.

Mr. Watson: I move to strike out all the testimony in regard to the plant and all that sort of thing as having no connection with the issues in this case.

2278 *William I. Ferris*

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ95. How many employees has the L. E. Waterman Company in its factory at 40 Fletcher Street? A. You mean the gold pen factory?

RDQ96. (Question is repeated.) A. In the neighborhood of 150 or 175 people, to my recollection.

RDQ97. About how many employees are engaged in the manufacture of the rubber parts of fountain pens in the factory at Seymour? A. I believe there are over two hundred.

RDQ98. How many employees have you at the main office, 173 Broadway, New York? A. Some 175 to 200.

2279 RDQ99. Do you have branch stores at Boston, Chicago and San Francisco? A. We do.

RDQ100. Is it not a fact that you had very little to do with these negotiations to which Colonel Bacon has referred in his cross-examination? A. My principal interest was in connection with the machinery as to how far and to what extent we could use it—make use of it.

RDQ101. Will you look at the pen points which I now show you and tell me the kind of iridium the pens are pointed with? I show you Defendant's Exhibit A-69? (The witness takes the pens to the window where he can get better light.) A. The pens are mutilated and in bad shape. One of them has only one point on and the iridium that is left on the pen shows indication of

2280 being tampered with in some way. It is pretty difficult to tell without testing them, just what condition they are in.

RDQ102. Do the pens look as if they had met with some accident or been repointed? A. They have met with an accident, or are mutilated; I will not say they have been repointed. They are in such condition that it is impossible to tell what grade of iridium is on the point without testing them.

RDQ103. Testing them in what way? A. On a lathe or by an oil stone or a file.

RDQ104. Can an expert tell the quality of iridium on the point of a gold pen with any certainty by merely examining them through a magnifying glass such as ordinarily used by pen

makers? A. It would be difficult to tell if the iridium had the polished or finished point—highly polished point. A certain grade of iridium which might not be very hard could be polished and given a lustre of the appearance of a hard point.

RDQ105. Have the color of a hard point? A. Have the color of a hard point.

RDQ106. From what you are able to judge of these pens, Defendant's Exhibit A-69, through a magnifying glass are you able to say or is anybody able to say whether the iridium is soft or hard? A. It would be difficult to tell. They might not be the very hardest iridium but they do not have the appearance of being what is known as soft iridium, on a certain grade of pens. 2282

RDQ107. Do you believe any expert could tell from an examination through a glass whether the pens Exhibit A-69 are hard or soft iridium? A. It is possible but I doubt it.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ108. You have not examined Exhibit A-69 through a microscope but simply with the naked eye? A. I used a glass.

RXQ109. Today? A. Yes.

RXQ110. That was a pocket glass that you had with you? A. Yes.

RXQ111. It was not the usual glass used by pen makers? A. Used by some. 2283

RXQ112. Have you ever ground pens? A. I have.

RXQ113. How much? A. More in an experimental way.

RXQ114. How many have you ever ground? A. I should say several dozen.

RXQ115. In how many years? A. Running through several years.

RXQ116. How many years? A. Since I have been interested in the manufacture; in the neighborhood of ten years.

RXQ117. You are not prepared to say that a man who is working eight hours a day for twenty-five dollars in grinding pen points and who examined A-69 through a large microscope,

brought in for the purpose, could not tell whether or not they were manufactured of hard iridium? A. I question whether he could tell if the points were finished points, with polish on them, whether they were hard or medium hard. In iridium there is very hard and what is called soft point iridium and there are intermediate hardnesses.

RXQ118. Soft iridium is what is called manufactured iridium, is it not? A. Commonly so but there are a great many pieces of soft iridium found in the native iridium.

RXQ119. You are not prepared to swear that the iridium on Exhibit A-69 is not manufactured iridium? A. It does not have that appearance.

2285 RXQ120. You are not willing to swear that it is not manufactured iridium? A. What do you mean by manufactured iridium?

RXQ121. Well, don't you know, you an expert pen maker? A. With different people, what one calls manufactured another calls something else.

RXQ122. I mean by manufactured iridium a mixture of native iridium and platinum so combined as to join the two metals? A. To make it soft?

RXQ123. I ask you the question. Is not that so-called manufactured iridium? A. I am not sure about that.

RXQ124. And is not the trade name of manufactured iridium this combination of hard iridium and platinum? A. Not nec-

2286 essarily. I have seen some of it as soft as platinum and it was a question whether it had very little iridium in if any at all.

RXQ125. If you wanted to buy manufactured iridium would not people who deal in it know what you mean if you ask for that? A. It is possible. We never use it, only I have seen samples of it.

RXQ126. Don't you know that that was manufactured or so-called soft iridium used on those very cheap 25 cent pens that you bought of A. A. Waterman & Co? A. I know the points were soft.

RXQ127. Don't you know it was manufactured iridium and manufactured according to the sample you submitted? A. I

do not. The sample as I recall it and tested it, was a hard point.

RXQ128. Did you get hard points? A. No, they were soft points.

RXQ129. And you did not expect to get the best quality of hard iridium on a 25 cent pen did you? A. We did when we submitted a sample of a hard point.

RXQ130. Is there hard iridium on the first sample that you sent down for a quotation? A. To my recollection I tested it and it was a hard point.

RXQ131. How did you test it? A. Tested it with an oil stone.

2288

RXQ132. Can you tell by testing on an oil stone the difference between manufactured and unmanufactured iridium? A. I can tell whether it is hard or soft.

RXQ133. Can you tell whether it is manufactured or native? A. It is possible, as I understand it, to make the manufactured hard.

RXQ134. By testing on a stone can you certainly determine whether the point is made from native iridium or manufactured iridium? A. I will not say as to that but I can tell whether it is a hard or soft point.

RXQ135. L. E. Waterman & Company do not sell to jobbers at all, do they? A. No, sir.

RXQ136. You sell through Mexico? A. We sell pens in Mexico.

2289

RXQ137. Do you sell them on consignment? A. I don't know as to that. I know we send pens there. As to the details of it I am not clear.

RXQ138. Your principal factory is in Fletcher Street? A. Yes.

RXQ139. And that is where you have about 150 or 175 employees? A. Yes.

RXQ140. And there you make ink? A. The Waterman Company does not make ink.

RXQ141. Do not some of those 150 or 175 employees make ink? A. No.

RXQ142. What are they employed in doing? A. All work in connection with the gold pens, assembling and various other work connected with the fountain pen holders.

RXQ143. The ink company is a subsidiary company, is it? A. No, it is an independent company.

RXQ144. And it has its factory in the same building? A. Yes.

RXQ145. Are any of those 150 employees used in turning barrels? A. No.

RXQ146. Do Aiken-Lambert Company turn any barrels in that factory? A. They have a room there.

RXQ147. Are they included in the 150 or 175? A. No.

2291 RXQ148. Is there an office force down there? A. No, not what we understand as an office force. There are three or four that attend to office work.

RXQ149. How many of that 150 are girls or women? A. I think about half a dozen.

RXQ150. How many are young men under twenty-one? A. That is pretty hard to tell. We have a good many people in the neighborhood of eighteen or twenty years old. We have a great many older.

RXQ151. Are one half of them under twenty-one? A. It is pretty hard to tell. I hardly think so.

RXQ152. A great many of them are employed in purely unskilled work, are they not? A. A great many are apprentices or

2292 have been, and do the work and it is all inspected afterwards by people that have served a long time at it, to see that the work is in proper shape before it is finally passed out of the manufacturing department.

RXQ153. How many of the 150 are experts who make $25 a week or upwards? A. I won't say that any of them make more than $25 a week, though there are a few.

RXQ154. About how many? A. There are some heads of the different departments that are paid more than $25 a week.

RXQ155. How many of them are paid more than $20 a week? A. There are quite a number.

2293

RXQ156. How many of this 150, about; I don't expect you to be accurate? A. I should say possibly a dozen to twenty. The great part of them are paid in the neighborhood of $20 a week.

RXQ157. The Messrs. Day at Seymour manufacture rubber cables and a great many things besides pens, do they? A. Not to my knowledge.

RXQ158. Don't you know that they manufacture other things besides penholders? A. I know they do not.

RXQ159. That is the only thing they manufacture? A. That is the only thing.

RXQ160. Who else do they manufacture for besides you? A. As I testified before, I think they make a few pens for Mr. Brown. I think that is practically all except a few rubber holders for gold dip pens.

2294

Deposition closed.

Signature waived.

JOHN SEILER, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Watson:

2295

Q1. Please state your name, place of residence and business? A. John Seiler; 976 East 9th Street, Brooklyn; gold pen maker.

Q2. You are employed by L. E. Waterman Company? A. Yes.

Q3. Foreman of the gold pen factory? A. Yes.

Q4. How long have you been employed by L. E. Waterman Company? A. Ten years.

Q5. And all this time you have been foreman of the gold pen factory? A. Yes.

Q6. How long have you been a gold pen maker? A. Twenty-nine years.

2296 *John Seiler*

Q7. Are you familiar with the iridium which is used by L. E. Waterman Company in manufacturing gold pens in their factory? A. Yes.

Q8. What kind of iridium is it that is used in the manufacture of gold pens in the L. E. Waterman Company's factory? A. Commercial iridium.

Q9. Is it hard or soft? A. Hard points.

Q10. Hard iridium? A. Yes.

Q11. Has that been a fact all the time that you have been employed by L. E. Waterman Company, that they have used hard iridium for their gold pen points? A. Yes.

2297 Q12. Have you ever known at any time any gold pens made in the L. E. Waterman Company factory which were made of anything but hard iridium points? A. No, sir.

CROSS-EXAMINATION by Mr. Bacon:

XQ13. How much do you pay for commercial iridium? A. I don't know. It averages anywhere from $52 up.

XQ14. An ounce? A. Yes, an ounce.

XQ15. This iridium of commerce comes in very small specks, does it not? A. Yes.

XQ16. And do you use it all in the manufacture of pens? A. Not all, no.

XQ17. What proportion do you reject? A. Well, what ever
2298 may be soft.

XQ18. What proportion would that be? A. Anywhere from 20 per cent.

XQ19. To what? A. Possibly 40 per cent—from twenty to forty, whatever it may be.

XQ20. Do you know what manufactured iridium is? A. Yes.

XQ21. What is it? A. It is an iridium that has platinum in it; that is, what I have seen of it.

XQ22. Do you have the same kind of iridium on a pen that retails for $2.50 as one that retails for $6? A. Yes.

XQ23. Just the same? A. Just the same.

2299

XQ24. Are you prepared to say that in your $2.50 pens you have not used in a very large proportion of cases a soft iridium? A. No, sir.

XQ25. Do you buy the iridium yourself? A. No.

XQ26. Do you inspect all of these pens? A. Not all, no. I am in touch with the iridium at all times.

XQ27. You do not pretend to inspect every pen that is manufactured? A. No.

XQ28. How long has L. E. Waterman Company been manufacturing gold pens? A. Ten years.

XQ29. They do not manufacture all the pens that they use? A. Not to my knowledge. I don't know. I don't know what pens they have made outside.

2300

XQ30. But they are having pens made all the time outside, are they not? A. Not that I know of.

XQ31. You don't pretend to say that now you manufacture in your factory all the gold pens that they used? A. I cannot say when they have them made outside and when they do not, because I am not in touch with that part of the business.

XQ32. You don't know anything about the assembling? A. I have an idea of the assembling but I am not in touch with it now. I have not charge of that.

XQ33. What is the difference between a gold pen that sells for $2.50 and one that sells for $6? A. There is more gold in it, larger size. The workmanship is just as good. The only difference is in the weight of the gold.

2301

XQ34. How much more value would there be in the largest pen than the smallest pen?

Mr. Watson: Objected to as immaterial to any issue in this case.

A. How much in value?

XQ35. In gold value? A. I could not answer that off handed.

XQ36. About?

Mr. Watson: The same objection.

A. Well, I don't know.

XQ37. How many grinders have you in your factory? A. About eighty-five.

XQ38. Are they all manufacturing pens that are marked Waterman's Ideal? A. No, sir.

XQ39. What are they marked? A. Some are Aiken-Lambert.

XQ40. And some Remex? A. There are some Remex, yes, very few.

XQ41. Pen & Ink? A. Not to my knowledge. I have not made any pen and ink of late.

XQ42. Any other names that you mark them? A. We have
2303 what we call—it is an Aiken-Lambert pen.

XQ43. A great proportion of what you make are simply stamped "14 karat," without any name, are they not? A. Aiken-Lambert?

XQ44. No, all kinds? A. The great proportion of our pens?

XQ45. A large proportion? A. No, a very small portion are stamped just "14 karat."

XQ46. How much? A. I don't imagine there is over 5,000 or 10,000 altogether stamped 14 karat alone.

XQ47. The rest are all marked how? A. L. E. Waterman Company; L. E. Waterman Ideal.

XQ48. All of them? A. Outside of Aiken-Lambert, yes.

XQ49. How many do you make for Aiken-Lambert in a
2304 year? A. I have not the slightest idea.

XQ50. How many grinders do you have? A. Eighty-five.

XQ51. Yours is what is called an open shop? A. Yes, an open shop.

XQ52. How many union men have you among those eighty-five?

Mr. Watson: Objected to as immaterial and irrelevant to any issue.

XQ53. How many of them would be called expert grinders? A. About sixty.

XQ54. How many of them make $25 a week and upwards? A. There are not any.

XQ55. Do you mean to say that your expert grinders make less than $25 a week? A. Yes.

XQ56. About how much do they make? A. $20.

XQ57. How many of those eighty-five are young men under twenty-one? A. About twenty or twenty-five.

XQ58. How young are the youngest of those eighty-five experts? A. About seventeen or eighteen, some are, grinding pens.

XQ59. How long have they been in the business? A. Two or three years.

2306

XQ60. And you call them experts? A. No, sir, I have not called them experts.

XQ61. I asked you how many of the eighty-five experts—A. I didn't say I had eighty-five experts. I said I had eighty-five grinders.

XQ62. How many experts have you? A. About sixty-five—from sixty to sixty-five.

XQ63. How many of them are under twenty-one? A. None.

XQ64. You have nothing to do personally with the selection of iridium? A. It comes under my notice; I pass on it, when it is purchased.

XQ65. Do you mean to say that the man who selects the iridium from the commercial article and determines what shall go in the pens, does not get over $25 a week? A. Yes.

2307

XQ66. Does he only get $20? A. Yes.

XQ67. How long has he been in that business? A. Possibly twenty years.

XQ68. And only gets $20 a week now? A. Yes.

XQ69. This strike, this last week, was not in your department I suppose? A. No.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ70. You testify that you make from 5,000 to 10,000 pens marked 14 karat. How many pens do you turn out in a year

in the L. E. Waterman factory, gold pens? A. Do you want a past record of the average or what we are doing today?

RDQ71. What you are doing today? A. About twenty thousand a week.

RDQ72. How many did you make last year? A. Well, off hand I would say possibly 350,000.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ73. Is it not a fact that about 40 per cent of all the pens that you grind come back as waste? A. No, sir.

2309 RXQ74. And are rejected? A. No.

RXQ75. Because not made by experts? A. No.

RXQ76. What percentage? A. I don't know. That is not true.

RXQ77. How large a percentage? A. I don't know anything about what comes back from the trade; I am not in touch with that at all, as far as that goes.

RXQ78. What percentage of those pens in the shop that are started to be made are turned back because not perfect? A. What do you mean—in the inspection?

RXQ79. Yes? A. Before they leave the pen shop at all?

RXQ80. Yes. Is it about 40 per cent? A. No, sir, it is not.

RXQ81. How much—twenty-five? A. No, about twenty.

2310 That is all according to the various styles that we make.

RXQ82. Then about twenty per cent that are ground do not pass inspection? A. No, I won't say.

RXQ83. Is not that what you said a moment ago? A. I know, but I was going to explain in regard to the grinders. Most all our work is special work and the grinders will go to what is called D point or E point and will examine them and if we find it is not according to the sample we turn it back; but that work is not destroyed.

RXQ84. What is done with it? A. The grinder fixes it up again and he passes it in.

RXQ85. He regrinds it? A. Yes.

RXQ86. Why do you say that all your work is special work? A. Most all of our work I say is special work.

RXQ87. Then at your factory on Fletcher Street you only make specialty pens; is that the fact? A. No, what I would call special work. The outside grinders as a rule when they come in there know absolutely nothing about grinding styles. We have different styles all through the shop. We have to match steel pens a whole lot in our work.

RXQ88. Your pens are divided into certain grades and styles? A. Yes.

RXQ89. One man will make the same grade and same style day after day? A. No.

2312

RXQ90. Do you change them every day? A. No, we have different styles that we have to grind from day to day.

RXQ91. How much does a pen weigh that sells for $2.50, for the completed pen?

Mr. Watson: Objected to as immaterial and incompetent.

A. About two and three-fourths pennyweight per dozen.

RXQ92. How much do they weigh in pens that sell for $6 the completed pen?

Mr. Watson: The same objections.

A. Between five and six pennyweight per dozen.

2313

RXQ93. And the gold is worth about 60 cents a pennyweight? A. About that; 61 or 62.

RXQ94. You have been a grinder how long? A. I have been grinding pens about twenty years.

RXQ95. Before you were superintendent you were a grinder were you? A. Yes.

RXQ96. What shop were you in? A. E. S. Johnson & Company.

RXQ97. Is that all? A. Yes.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ98. Did you ever know of any lot of pens made in the L. E. Waterman Company factory that went out of the factory and then came back as rejected? A. No.

RDQ99. The rejection you speak of is that pens that fail to pass the inspectors are turned back to the grinder to correct? A. To correct; that is all.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ100. And that is a high as twenty per cent? A. No, I won't say that. Some grinders have very few during the
2315 week. Others have more. The exact amount I could not say.

RXQ101. How many apprentices do you have?

Mr. Watson: Objected to as not proper re-cross examination and as irrelevant and immaterial.

A. Between twenty and twenty-five.

RXQ102. They are grinding pens all the time? A. No.

RXQ103. What are they doing? A. Doing other work in the shop.

RXQ104. Then apprentices do not grind? A. They grind part of the time.

RXQ105. How many hours a day will they grind? A. I don't know. It is all according to the other work they have to do.

2316 RXQ106. Those apprentices are grinding pens every day? A. Some of them, not all of them; some days they don't grind.

RXQ107. When pens are sent out to the trade, they are inspected first by the inspectors? A. Yes.

RXQ108. How do they inspect them? A. By examining them.

RXQ109. With what? A. With a glass.

RXQ110. A magnifying glass? A. Yes.

RXQ111. Is that the only way they inspect them? A. Yes.

Deposition closed.

Signature waived.

Adjourned to Thursday April 27, 1911, at 10:30 A. M.

William G. Frazer 2317

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

vs.

MODERN PEN COMPANY,
Defendant. 2318

Met pursuant to adjournment at the office of Watson & Raymond, 10 Wall Street, New York, April 28, 1911, at 10:30 A. M.

Appearances:

Samuel S. Watson and Walter B. Raymond, for Plaintiff.
Alexander S. Bacon, for Defendant.

WILLIAM G. FRAZER, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Raymond:

Q1. What is your name, residence and occupation? A. William G. Frazer; 507 Monroe Street, Brooklyn; employed by the American News Company. 2319

Q2. In what capacity? A. Manager of the Postal Card Department.

Q3. Are you the William G. Frazer who was formerly a member of the firm of A. A. Waterman & Co.? A. Yes.

Q4. When was that firm formed? A. I think it was in January, 1901, if I remember the date correctly.

Q5. Who were the members of that firm? A. Arthur A. Waterman, Hobart W. Geyer and myself.

Q6. Did that firm have any connection with any previous firm of A. A. Waterman & Co.? A. No.

Q7. Did it have any connection with any previous firm of which A. A. Waterman was a member? A. No, sir.

Q8. Was this a successor of any firm of which A. A. Waterman & Co. was a member? A. No.

Q9. Or ever had been a member? A. No, sir.

Q10. Did you take over the assets of any previous firm of which A. A. Waterman was a member or with which he had any connection? A. No, sir.

Q11. Did you pay any debts or liabilities of any previous
2321 firm of which A. A. Waterman was a member? A. No, sir.

Q12. Or with which he had any connection? A. No, sir.

Q13. Who conducted these negotiations which led to the formation of this firm in 1901? A. I did largely.

Q14. With whom did you negotiate? A. Mr. Waterman.

Q15. Where? A. Both in Boston and New York.

Q16. Did Mr. Geyer take any part in these negotiations? A. Not in the preliminary negotiation, no, sir.

Q17. Did he take any part in the drawing of these contracts? A. He did, yes.

Q18. Did he go over the details of the contracts with you? A. Yes.

Q19. Did you have any discussion with Mr. Geyer as to the advisibility of making these partnerships? A. Oh, yes, surely.
2322 That was part of the discussion.

Q20. You did not assume to do the whole business simply on your own say so? A. I did not, no, sir.

Q21. Mr. Geyer and yourself were equally interested in the business? A. Yes, we were.

Q22. What capital did A. A. Waterman bring to this partnership? A. Cash capital do you mean?

Q23. Yes? A. He did not bring any.

Q24. Did he bring any goods or merchandise? A. No merchandise, no.

Q25. What did he bring into the partnership? A. Some patents and some parts of tools that were used, I believe, in the factory in Somerville—West Somerville.

Q26. What did these tools consist of? A. I could not tell you. They were not of apparent value, so far as using them was concerned.

Q27. Were you in charge of the factory of Frazer & Geyer Company? A. Yes.

Q28. Do you know whether or not these tools were actually used, and dies were actually used, in the manufacture of pens by your concern? A. They were not used by Frazer & Geyer Company, no, sir.

Q29. Were they used by A. A. Waterman & Co.? A. I could not answer that positively. Mr. Stone was the foreman at West Somerville and he came with Mr. Waterman and brought some of these things with him; how many or how few they used I could not say. 2324

Q30. Were there very many? A. No, sir; they were not of appreciable value.

Q31. You did not consider that as a valuable asset to the concern? A. No, sir.

Q32. Had you previously manufactured pens of the same design and kind as you manufactured after A. A. Waterman came with the concern? A. Do you mean gold pens?

Q33. Gold pens? A. Yes, we have.

Q34. How about rubber holders? A. The holders made after A. A. Waterman came to New York, some of them were of a different nature from those that we had made before.

Q35. Were these changed from time to time, these designs? 2325
A. Yes.

Q36. That has been the case ever since you have had anything to do with the gold pen business? A. Yes, it is continually changed.

Q37. How long had you had any connection with the fountain pen business? A. I guess about twelve or thirteen years.

Q38. At that time? A. No, about eight years at that time, eight or nine.

Q39. That is, you began business some time in 1893 or 1894? A. If that figures out correctly; it was eight or nine years previous to that time.

2326 *William G. Frazer*

Q40. That you had been actually engaged in the manufacture of gold pens? A. Yes.

Q41. Were you familiar, at the time you made this contract with A. A. Waterman, with the fountain pens that were generally known on the market? A. I think so, yes.

Q42. Did you know the pens that were made by L. E. Waterman Company? A. I did.

Q43. Do you know under what general trade name those pens were known? A. Yes.

Q44. What was it? A. Ideal.

Q45. Was that the only trade name under which they were known? A. L. E. Waterman.

2327

Q46. Do you know how they were generally called for by the public? A. No, I don't think I know anything about that.

Q47. Or how they were called for by the trade? A. The trade would usually call them Waterman pens.

Q48. They were widely advertised pens at that time? A. Extensively advertised, yes.

Q49. And well known? A. Yes.

Q50. How long had you known these Waterman pens? A. Previous to that date, you mean?

Q51. Yes? A. Almost immediately after I became associated, or became interested in the fountain pen business.

Q52. Did the fact that this man's name was Waterman have anything to do with the formation of this partnership under the

2328 name of A. A. Waterman & Co.?

Mr. Bacon: Objected to as immaterial.

A. Yes.

Q53. Was that one of the influencing reasons for making the partnership? A. One of the reasons.

Q54. After this contract was entered into early in 1901, were there other contracts entered into between yourself and Mr. Geyer and Mr. Waterman? A. Yes.

Q55. And modifications of contracts? A. Yes.

Q56. Who took part in these subsequent negotiations? A. Mr. I. E. Chapman came in then and became quite prominent

with all the negotiations or contracts that were made after he came in.

Q57. Did Mr. Chapman take a prominent part in negotiations of these subsequent contracts? A. He did.

CROSS-EXAMINATION by Mr. Bacon:

XQ58. Mr. I. E. Chapman never had anything to do with the practical management of the factory, did he? A. No, sir.

XQ59. He knew nothing about the manufacture of pens? A. No.

XQ60. He was a member of the corporation of Merritt & Chapman Derrick and Wrecking Company? A. I believe he 2330
was.

XQ61. And devoted his attention to that? A. Yes, I presume so.

XQ62. And he was the financial backer of the new combination of A. A. Waterman & Co. and Frazer & Geyer Co., was he not? A. Yes.

XQ63. And he and his friends put in by far more money than all the others put together, didn't they? A. Yes.

XQ64. I call your attention to the articles of copartnership of January 9, 1901, already in evidence and to the following clause:

"Said Arthur A. Waterman shall contribute all his time, energy and experience to the business of said firm and also all 2331
the tools, dies, records and designs and other articles and assets belonging to said Arthur A. Waterman and recently in use in the business of a former firm of A. A. Waterman & Co. together with the use of all patents now owned by him for fountain pens, to be used and employed in common between them for the support and management of said business to their mutual profit and advantage." That is a correct statement, is it? A. I think it is correct, yes. It sounds familiar.

XQ65. Do you know how many patents Mr. Waterman brought into the concern? A. I don't remember the exact number, no.

XQ66. Quite a number, was it not? A. I think only two or three.

XQ67. You immediately began to manufacture pens under his patents? A. Under some of them, yes.

XQ68. From that time up to 1905 you were continually changing and improving your pens? A. Yes, tried to.

XQ69. It was your earnest endeavor to make every pen better than his older brother; is that right? A. What do you mean by older brother?

XQ70. His twin brother? A. We were always trying to improve the quality of the goods we manufactured, yes.

2333 XQ71. And as far as you know, the pens that you manufactured in 1905 were as good as the best pens on the market? A. Yes, I think they were.

XQ72. That applies to gold pens and to the fountain pen complete? A. Yes.

XQ73. And especially you believed that the self-filling pen and the middle joint pen were the best designs on the market? A. Yes.

XQ74. They were far superior to end joint pens? A. That would be a matter of taste. We thought they were better as a selling proposition.

XQ75. Is it not a fact as to the end joint pen, which had to be unscrewed in order to fill, that after a time the little screw would become worn loose so that the pen would sweat or leak
2334 at that joint under the finger? A. Only a very small percentage of the well manufactured end joints would leak at the joint.

XQ76. During the year you were in business you had a great many Ideal pens come in to be repaired? A. It depends upon what you mean by a great many. We had some of every make come in.

XQ77. And they were generally leaky at the joint? A. That was very often the trouble.

XQ78. And there had been no material change in the construction of the end joint pens for the last twenty years? A. Not so far as I know. The shape of the joint has been changed.

XQ79. That is to say, the end joint pen manufactured today by the L. E. Waterman people and by the A. A. Waterman people excepting as far as the feed is concerned, is substantially the same as it was many years ago? A. Yes.

XQ80. And you looked upon the middle joint and self-filling pens manufactured by A. A. Waterman & Co. as a substantial improvement over the end joint pen? A. Yes.

XQ81. You have no doubt of that today, that it is a substantial improvement? A. No, I have not any doubt of it.

Mr. Watson: I move to strike out this whole line of testimony as not proper cross-examination, as new matter and that the defendant makes the witness his own as to new matter. 2336

XQ82. Do you know who was a member of the firm of A. A. Waterman & Co. which immediately preceded the formation of your firm in 1901? A. Do you mean do I know his name?

XQ83. Yes? A. Mr. Gibson, I believe.

XQ84. Had he not died about a year before? A. I don't know.

XQ85. There was a firm of A. A. Waterman & Co. that immediately preceded yours? A. I think there was, yes.

XQ86. And that had been manufacturing pens at Somerville, Mass.? A. I believe so, yes.

XQ87. Do you know who was the "Company" of that firm? A. No, I do not. 2337

XQ88. Mr. A. A. Waterman's principal fort was that of a salesman, was it not? A. Well, I don't think so, fully, before he came to New York.

XQ89. He had been a manufacturer and inventor? A. Yes.

XQ90. And had been the real inventor in a number of patents that were taken out in the names of other people? A. I don't know.

XQ91. You do know that he owned a good many patents, don't you? A. No, I do not.

XQ92. Several? A. Two or three or four, I think he owned.

2338 *William G. Frazer*

XQ93. When did you first hear of Mr. A. A. Waterman and his manufacture of Waterman pens under his own name? A. What do you mean by his own name?

XQ94. A. A. Waterman & Co.? A. I presume three or four years before the partnership was formed.

XQ95. From about 1898? A. I think about that, yes, or earlier.

XQ96. From that time up until 1905, there was continually manufactured and sold on the market pens which bore the imprint of A. A. Waterman & Co.? A. There were two or three breaks. I don't know whether they were continually manu-
2339 facturing them or not.

XQ97. When was the break? A. The first one was when he was associated with Mr. Lockwood of the Davidson Rubber Company.

XQ98. When was that? A. That was some time previous; I have not the date; three or four years I guess.

XQ99. Was there any time that he was not manufacturing pens and marking them either A. A. Waterman or A. A. Waterman & Co.? A. I could not answer the question.

XQ100. But you do know that from January 9, 1901, up to 1905, pens were continuously and openly manufactured, sold and advertised throughout the United States and foreign countries, imprinted A. A. Waterman & Co.? A. Yes.

XQ101. And after you began to manufacture pens bearing
2340 that imprint how were they designated by the trade? A. We were manufacturing them and put the name A. A. Waterman & Co. on them and sold them as such.

XQ102. The trade knew them as such, did they? A. I believe so.

XQ103. And after you began to manufacture A. A. Waterman & Co. pens how did the trade designate the L. E. Waterman product? A. I don't know.

XQ104. Didn't they make a distinction by calling them Ideal pens? A. Some may and some may not.

XQ105. Then you don't know about it? A. I don't know.

XQ106. Do you know how individuals denominated the L. E. Waterman pens after the A. A. Waterman pens were on the market? A. No, I do not; I have not any idea.

XQ107. During what years were you actually engaged in the manufacture of fountain pens? A. I think it was twelve or thirteen years previous to 1905.

XQ108. That would be about 1893 or 1894? A. I think so.

XQ109. And during that time did you manufacture the entire fountain penholders, sections, feed and pen points? A. Not all the time, no.

XQ110. During what period did you manufacture the whole product? A. At first I did not manufacture anything. 2342

XQ111. What did you do? A. I had them made by other people, and assembled them together and sold them.

XQ112. Then you simply did the assembling? A. Yes.

XQ113. For how long a period? A. Perhaps a year and a half.

XQ114. Did it take any machinery to assemble? A. No.

XQ115. How many men did you employ? A. It depends on the number of pens we were selling.

XQ116. About how many? A. That varies. I may sell a full gross this week and next week five or six or eight gross. It all depends on the state of the business.

XQ117. How many pens could a man assemble in eight hours? A. I could not tell. 2343

XQ118. About how many? A. I could not tell.

XQ119. A man could assemble a complete pen in about a minute, couldn't he? A. I would hardly think so.

XQ120. Was it more than two minutes? A. I cannot tell you. It is a guess; I don't know.

XQ121. It is very short? A. Not a long time, no.

XQ122. Did it take men of very high skill to do that? A. Yes, it takes skill to do it.

XQ123. Men that receive very high wages? A. The men we employed in the beginning happened to be girls.

XQ124. And they did assembling? A. Yes.

2344 *William G. Frazer*

XQ125. And they were skillful assemblers? A. Yes.

XQ126. How much did you pay them a week? A. I think about $10 a week.

XQ127. When you were doing the most and employing men how much did you pay them a week for assembling?

Mr. Raymond: I object to all this line of testimony as immaterial and irrelevant and not proper cross-examination.

A. It is only a guess as to the salary. Somewhere around $15 or $20 a week.

2345 XQ128. For how many years do you say you made the completed pen—everything? A. Just subsequent to the time when the partnership was formed with Mr. Geyer, was when we began to make the goods complete.

XQ129. About 1899? A. About a year after we formed the copartnership.

XQ130. Then you began to manufacture the completed pen about 1900; that is, before you began the copartnership of A. A. Waterman & Co.? A. Yes, a good while before.

XQ131. And from about 1900 to 1905 you made the completed pen? A. It is longer than that. 1901 was when the A. A. Waterman & Co. copartnership was formed. I was speaking of the partnership which he and I formed.

XQ132. Much earlier? A. Much earlier.

2346 XQ133. Are you a practical pen manufacturer? A. Yes.

XQ134. Did you ever inspect pens to see whether they were properly made or not? A. Yes.

XQ135. Can you tell by inspection of a pen whether it is properly constructed? A. I can tell by testing it.

XQ136. You are able to test pens? A. I was.

XQ137. Can you tell whether a point is native iridium or manufactured iridium? A. No.

XQ138. Couldn't you tell that with a magnifying glass? A. No.

XQ139. Could you do it by testing it on paper? A. No.

XQ140. What do you mean by inspecting pens? A. To see whether the joints are properly fitted together; see whether the feeds are properly fitted together in the section; to see if the ink flows freely through the feed and to see if the pen points are smooth.

XQ141. How would you determine the smoothness of a pen point? A. I would write with it.

XQ142. That is the only way you would inspect it? A. Yes.

XQ143. You had grinders under you? A. Yes.

XQ144. They had to be men of great skill, did they not? A. Yes. 2348

XQ145. When you took in Mr .Waterman as a partner in 1901, he already had a large business in vending pens did he not? A. I thought he had.

XQ146. And he brought that all to you? A. He brought what he had, I guess.

XQ147. And for two or three years after he came in A. A. Waterman & Co. made a good deal of money, didn't they, paid large dividends? A. They paid dividends regularly, yes.

XQ148. How large were those dividends? A. I think it was ten per cent on the preferred stock and I think six per cent on the common stock.

XQ149. Was it not much more on the common stock? A. I don't think it was, no.

XQ150. That was after Mr. Waterman came in? A. Yes. 2349

XQ151. The Chapmans became identified with this enterprise as early as about 1901, didn't they? A. After the copartnership was formed, yes.

XQ152. Very shortly after? A. Yes.

XQ153. When you went into the Waterman partnership you agreed to furnish a certain amount of credit did you not, to A. A. Waterman & Co.? A. That was the understanding, yes.

XQ154. And did you get this credit largely through the Chapmans? A. Subsequently, yes.

XQ155. And within a very short time they owned a majority of the stock of the Frazer & Geyer Company did they not? A. Yes.

XQ156. And had advanced about thirty thousand dollars to the enterprise outside of their stock? A. Yes.

XQ157. For which they took notes? A. Yes.

XQ158. And the Frazer & Geyer Company and A. A. Waterman & Co. gave them a chattel mortgage? A. Yes.

XQ159. These notes were joint notes of the A. A. Waterman & Co. and Frazer & Geyer Co.? A. I think they were.

XQ160. Signed by one and endorsed by the other? A. Yes.

Mr. Raymond: I object to all this testimony as immaterial and irrelevant, and improper cross-examination and I move to strike it out.

2351 XQ161. Then very early in the Chapmans' connection with the enterprise there was a pooling agreement, was there not, whereby your stock and Mr. Chapman's stock and his friends' stock were put together in a voting trust?

Mr. Raymond: The same objections.

A. The common stock, yes.

XQ162. The common stock only had voting power? A. Yes.

XQ163. And by means of that pooling agreement your management was preserved and could not be changed; is not that a fact? A. No, sir, it is not.

XQ164. Did not this stock have to be voted as you and Mr. Chapman jointly should agree? A. Yes.

2352

Mr. Raymond: I object on the same grounds; further that the contract, the pooling agreement, is the best evidence.

XQ165. And if you and he did not agree there could be no change from the then condition? A. That is right.

XQ166. And you were the sole manager? A. I was the general manager of the company, yes.

XQ167. Do you remember the conditions in 1905, when the company needed more money? A. I have a faint recollection of that, yes.

XQ168. And the Chapmans refused to put up any more? A. Yes.

XQ169. They demanded a reorganization and an assessment of the stock? A. Yes.

XQ170. And I believe at first you consented tentatively to go in did you not? A. At first I did not do anything. Afterwards I consented to come in and sign the reorganization paper.

XQ171. And then after that when Mr. Waterman's attorney, Mr. Weaver, sent a notice around to the stockholders you refused to be bound by your first agreement did you not? A. No, I did not.

XQ172. Is it not a fact that you and Mr. Geyer withdrew from that agreement? A. It is not; no, sir. 2354

XQ173. You remember that Mr. Waterman did and his attorney? A. I don't remember it; no, sir.

XQ174. Don't you remember that fact? A. No, I do not.

Mr. Raymond: Same objections.

XQ175. Don't you remember that as a result of that circular sent out by Mr. Weaver, threatening a receiver, that certain suits were brought against you, Mr. Waterman and Mr. Geyer? A. I have entirely forgotten the circular and have no recollection of seeing it.

XQ176. You remember the suits being brought? A. Yes.

XQ177. And then there was a new scheme of reorganization; don't you remember that? A. No, sir, I do not. 2355

XQ178. Then your recollection of the details of that friction is not very good? A. Well, I remember enough of them.

XQ179. Do you remember that you brought suit afterwards? A. I defended a suit.

XQ180. Didn't you bring a suit? A. To have receivers appointed for A. A. Waterman & Co., yes.

XQ181. And that was after the reorganization was so perfected, was it not? A. No.

XQ182. Are you sure of that? A. I certainly am.

XQ183. Don't you know that the receiver was long after the organization of the Modern Pen Company? A. No, sir, it was not long after.

XQ184. How long after? A. It was not after, I say.

XQ185. How long after? A. It is not long after at all; it is not after at all. I said it was not long after.

XQ186. Do you think it was before the organization? A. Yes, I know it was before.

XQ187. Mr. A. A. Waterman during his connection with A. A. Waterman & Co. when you were a member of it, always insisted on keeping certain control of the manufacture, did he not, as to the designs and the workmanship? A. Yes, that was part of the understanding.

XQ188. And he was on the road as a salesman most of the time? A. Part of the time.

2357

XQ189. And he sold a very large part of the product that was manufactured by the Frazer & Geyer Company? A. He did not, no, sir.

XQ190. Do you know what proportion he did sell? A. Perhaps one-quarter or one-fifth, depending on the volume of the business for any particular year.

RE-DIRECT EXAMINATION by Mr. Raymond:

RDQ191. Did you ever sign any transfer of your rights in the firm of A. A. Waterman & Co., composed of yourself, Mr. Geyer and Mr. Waterman? A. I signed a transfer, yes—assigned a transfer.

2358

RDQ192. To whom? A. The Frazer & Geyer Company.

RDQ193. Did you ever make any assignment to the firm of A. A. Waterman & Co. composed of A. A. Waterman, W. L. Chapman and I. E. Chapman? A. No, sir.

RDQ194. This assignment that you made to Frazer & Geyer Company was to simply cover the merchandise? A. No, all the profits that might accrue from the business which A. A. Waterman & Co. did were assigned to the Frazer & Geyer Company.

RDQ195. That was back in 1901, was it not, the first year of your business? A. Yes, about the first year of the business.

RDQ196. Did you make any other assignment to Frazer & Geyer Company or to the copartnership of A. A. Waterman &

Co., composed of I. E. Chapman, W. L. Chapman and A. A. Waterman? A. No, sir.

RDQ197. Did you ever withdraw from the firm of A. A. Waterman & Co.? A. No, sir.

RDQ198. Did you ever sign any withdrawal, or assignment of your rights in the firm of A. A. Waterman & Co., to anybody? A. No, sir.

RDQ199. And the assignment that you refer to is simply an assignment of your profits in the concern of A. A. Waterman & Co., which you made in 1901? A. All the profits in excess of ten per cent of the amount invested.

RDQ200. That is, in excess of $500; that is the only assignment you ever made? A. Yes. 2360

RDQ201. In the beginning where did this $500 that you contributed for the partnership and the $500 that Mr. Geyer contributed for the partnership come from? A. My memory is that both the five hundreds were put in and were transferred from the Frazer & Geyer Company.

RDQ202. How many salesmen did you have on the road when Mr. Waterman was selling from one-fourth to one-fifth of the goods or output of the Frazer & Geyer Company? A. I think it was seven.

RDQ203. Did he sell any amount in excess of other salesmen? A. He sold more than some others but not more than all of them.

RDQ204. Some salesmen sold as much as he? A. Some salesmen sold as much as he did, yes. 2361

RDQ205. Now about end joint pens. Did you manufacture end joint pens? A. Yes.

RDQ206. Can you recall what percentage of your output were end joint pens? A. No, I could not.

RDQ207. Was it a large percentage? A. They were, until the time we began manufacturing the self-filling pens.

RDQ208. When did you begin to manufacture the self-filling pen? A. About a year after; in 1902, I think, after we had moved to Thames Street.

RDQ209. Is it not a fact that all the time you were in this business you were making numerically more end joint pens than self-filling pens? A. No, sir.

RDQ210. Colonel Bacon has asked you about the profits that were made after A. A. Waterman came into the concern. What dividends did you pay prior to the time that Mr. Waterman came into the concern? A. I could not answer the question.

RDQ211. Did he increase the business materially? A. The business was increased very materially after he came with us, yes.

RDQ212. Did he bring much business with him? A. No, sir, he did not.

RDQ213. How much total business did you do for a year after he came with you? A. Approximately $25,000.

RDQ214. That was your gross business? A. Gross business.

2363

RDQ215. Did you have any personal knowledge of any partnership of A. A. Waterman & Company prior to 1901, prior to the one that you formed? A. I simply heard that there was such a partnership.

RDQ216. Didn't you manufacture pens for A. A. Waterman which were marked "A. A. Waterman, maker, Boston"? A. No.

RDQ217. Do you know whether there was any partnership existing at that time? A. I don't remember, no.

RDQ218. Can you recall when that was? A. That was practically for all the year previous, which would be 1900.

RE-CROSS EXAMINATION by Mr. Bacon:

2364

RXQ219. After you started in to make self-filler pens were not the end joint pens that you manufactured of the cheapest grade? A. We made them of all grades; the same grades as we did the self-filling.

RXQ220. Did you make self-filling pens as cheap as the cheapest end joint pens? A. No.

RXQ221. Your cheapest grade were end joint? A. Yes.

RXQ222. And your cheapest grade were numerically very great in number, weren't they; that is, you sold more cheap pens than you did dear ones? A. No, we did not for quite some

time. Our business was largely pens that retail for $2 and up.

RXQ223. Your sales were largely self-filling and middle joint pens? A. Yes.

RXQ224. While your sales of cheap pens were of the end joint pen? A. Yes.

RXQ225. Do you have any recollection of the amount of pens that A. A. Waterman sold as compared with any other one particular salesman? A. Yes.

RXQ226. What was it? A. My recollection is that his largest year was about $25,000.

RXQ227. Your firm of A. A. Waterman & Co. was brought to a close, was it not, by a receivership appointed in supplementary proceedings, in an action wherein you were defendant? A. I don't know anything about that. 2366

RXQ228. You remember that there was such a receiver appointed? A. Yes.

RXQ229. On or about June 7, 1905? A. I do, yes.

RXQ230. The legal effect of the receivership you do not know? A. No.

RXQ231. But you do know that A. A. Waterman & Co. went into liquidation immediately after? A. I know that a receiver was appointed.

RXQ232. Don't you know that it was in liquidation before a receiver was appointed for A. A. Waterman & Co.? A. I don't know anything about that, no, sir. 2367

RXQ233. Don't you know that A. A. Waterman and Mr. Geyer closed it up in liquidation? A. I don't know anything about it, no, sir. They did not consult with me about that.

RXQ234. The $500 capital put in by you and Mr. Geyer, each of you, was charged against you individually on the books of the Frazer & Geyer Company, part of your dividend? A. Charged against us?

RXQ235. Did each of you have a salary? A. Yes.

RXQ236. It was charged against your salary? A. No, it was charged on the books. It had not been paid back.

2368

RXQ237. Didn't you and Mr. Geyer ever make good what you owed to the company? A. Yes, I did.

RXQ238. Then it was paid back, was it? A. Yes. You said charged against my salary. It was not charged against my salary.

RXQ239. Your salary was the only income you had from the company? A. Yes.

RXQ240. Then if your salary was on one side of the account and this $500 on the other side it must have been charged against your salary? A. I did not understand you. We owed the money all right and we paid it back.

2369 By Mr. Raymond:

RDQ241. When was this money paid back? A. I think in 1901.

RDQ242. Some time after the copartnership was formed? A. Yes.

RDQ243. And some time after the Chapmans came into the company? A. Yes.

Deposition closed.

Signature waived.

Adjourned to Saturday, April 29, 1911, at 11 A. M.

2370

Frederick W. Stevens 2371

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

vs.

MODERN PEN COMPANY,
Defendant. 2372

Met pursuant to adjournment at the office of Watson & Raymond, 10 Wall Street, New York, April 29, 1911, at 11 A. M.

Appearances:

Walter B. Raymond, for Plaintiff.
Alexander S. Bacon, for Defendant.

FREDERICK W. STEVENS, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct-examination by Mr. Raymond:

Q1. What is your name, residence and occupation? A. Frederick W. Stevens; residence, Boston; bookkeeper. 2373

Q2. Were you ever connected with Mr. Rhodes Lockwood? A. Yes.

Q3. For how long and in what capacity? A. From the first of December, 1870, to the first of April, 1907; first as bookkeeper and confidential man.

Q4. What happened in 1907 in relation to your employment by Mr. Lockwood? A. The business was sold out.

Q5. And you left the business? A. I resigned my position.

Q6. Do you know Arthur A. Waterman? A. Yes.

2374 *Frederick W. Stevens*

Q7. Will you state when you first knew Arthur A. Waterman and what his connection was with Rhodes Lockwood? A. Mr. Waterman came in to order a sample pen made. This was three months before he had any connection with Mr. Lockwood at all. After he had experimented with these samples for a while he came in and suggested to Mr. Lockwood that he manufacture a line of fountain pens and Mr. Arthur Waterman would sell them. He represented that he had been traveling for L. E. Waterman for a number of years and was acquainted with the trade from Canada to the Mississippi River.

Q8. Did Mr. Waterman and Mr. Lockwood enter into any arrangement; if they did, how do you know it? A. They did
2375 enter into an arrangement; and I know it because I had the papers in my possession. The business was practically under my supervision.

Q9. Was this a written contract that they entered into? A. Yes.

Q10. Do you know where that written contract is today? A. Yes, it is destroyed.

Q11. Will you state how you know that this contract or any other contract between Mr. Lockwood and Mr. Waterman is destroyed? A. When Mr. Paul bought out the Davidson Rubber Company he ordered everything destroyed in the way of books, records and papers up to within three years of his purchase; that is, prior to April 1, 1907. I think we kept the full
2376 three years and three months.

Q12. Who attended to destroying these records? A. I attended personally to the most of them.

Q13. What did you do? A. Put them in a dump cart and put them in the furnace under the boilers.

Q14. Do you remember whether there were any contracts relating to this A. A. Waterman & Co. matter among those papers which were destroyed? A. I recollect distinctly that in cleaning out the safe I had quite a large bundle of them and I asked whether they should be destroyed with the rest and the word was to burn them up.

Q15. Will you state what your relations were with this A. A. Waterman matter; was it under your personal supervision? A. It was under my personal supervision for the last six months. When Mr. Lockwood went to Europe he turned that business over to me with the request that I follow it very closely

Q16. What year was that? A. That was in 1898.

Q17. After 1898 did you keep in close touch with it? A. It was brought right into our office.

Q18. The books of account were kept right in your office? A. The books of account were kept in our office from the start.

Q19. That is, from sometime in 1897? A. From the time A. A. Waterman started. I could not give you the exact date that we gave him the first money. 2378

Q20. And the goods were manufactured by whom? A. The goods were manufactured by the Davidson Rubber Company and carried to an office that Mr. Waterman hired on Bromfield Street and were put together and sold over there.

Q21. Did you have anything to do with the office on Bromfield Street? A. I was supposed to go there three or four times a week and see how things were going there, and I did do it; probably went there five or six times.

Q22. Will you state what the relations were between Rhodes Lockwood and A. A. Waterman in the beginning of this arrangement between them; that is, in 1897? A. Mr. Lockwood agreed to furnish the necessary money and material. Mr. A. A. Waterman was to order the gold pens and put the goods together and he was to go on the road and sell the goods himself. 2379

Q23. Under what name was the concern operating at that time? A. A. A. Waterman Pen Company.

Q24. A. A. Waterman Pen Company? A. Yes.

Q25. Do you remember any suit that was brought against this A. A. Waterman Pen Company? A. Yes, I remember there was an injunction obtained here in New York restraining him from using that name.

Q26. What was the A. A. Waterman Pen Company—a corporation or a partnership? A. Just a name.

2380 *Frederick W. Stevens*

Q27. Who were interested in the concern as partners at that time? A. Mr. Lockwood always claimed that Mr. A. A. Waterman never was a partner, that he had the whole thing. He never gave Mr. Waterman any partnership rights at all.

Q28. Who was the partner with Mr. Waterman, if there was one? A. Nobody except Mr. Lockwood at that time.

Q29. When did Mr. Gibson come in? A. He came in later, after the suit was started.

Q30. Then what name did they give to the firm at that time? A. A. A. Waterman & Co.

Q31. Do you remember how long they continued in that style? A. I should say four or five months, perhaps six months.
2381 I don't remember just exactly.

Q32. Were there any relations between A. A. Waterman & Co. and Rhodes Lockwood or the Davidson Rubber Co.? A. Mr. Lockwood still held that neither had any partnership rights in the business, that it was all his.

Q33. Can you state what the substance of these contracts was, if there was any contract? A. Before Mr. Lockwood went to Europe Mr. A. A. Waterman gave him an assignment of everything, all his stock, materials, good will and everything that he possessed and after Mr. Gibson came in there was another assignment made from A. A. Waterman & Co. similar to the first one, taking in everything.

Q34. Did that include the name of A. A. Waterman & Co.?
2382 A. I consider it did.

Mr. Bacon: All this is objected to on the ground that this matter being in writing it is improper; the loss of the writing has not been specifically accounted for.

Q35. Do you remember whether there was any such assignment made by A. A. Waterman and an assignment made by A. A. Waterman & Co., composed of A. A. Waterman and E. L. Gibson? A. I do.

Q36. Was that assignment one of these papers that was destroyed? A. Yes, both of them.

Q37. You know that these papers were so destroyed? A. Yes.

Q38. Will you state what occurred in the early part of 1899 in reference to the relation between A. A. Waterman & Co. and Rhodes Lockwood or the Davidson Rubber Company? A. On the first day of February or the last day of January we went up to Mr. Waterman's place and took everything in the way of material and what books we desired to take, his stock books, and left him practically nothing but a few cupboards and fixtures, which Mr. Lockwood claimed to have the right to take but he said he would leave them as he said Mr. Waterman assured him that he should continue on in the business and was going to keep the room. 2384

Q39. Will you state what Mr. Lockwood took over in the way of patents at that time? A. Everything that Mr. Waterman had taken out in the way of patents on fountain pens and trade-marks.

Q40. Do you recollect how many patents or trade-marks were taken over? A. There was a trade-mark for the word Standard, a trade-mark for the word "Reliable," a patent on the middle joint Standard pens; a patent on a feed; a patent on a pen pump. Those are all that I recall but I think that there were two or three more.

Mr. Bacon: Objected to as to the assignment of patents; that certified copies thereof are the best evidence and the patents themselves can be obtained from the patent office, or copies. 2385

Q41. Do you remember whether or not a circular was sent out to the trade at the time that Mr. Lockwood took over these things from Mr. Waterman or from A. A. Waterman & Co.? A. I remember sending out circulars, yes.

Q42. I show you a circular dated February 1, 1899 purporting to be signed on a typewriter by Rhodes Lockwood and ask you whether that is the circular that was sent out at about that time? A. I should say that was a copy of it. I do not think that is the original circular.

Q43. You think that is a copy of the circular that was sent out at that time? A. Yes. I know we sent out circulars to that effect.

A circular is shown the witness and he states that they did not have a typewriter at that time.

Q44. Do you know whether or not on or about February 1, 1899, the business connection between A. A. Waterman Co. and Rhodes Lockwood was discontinued? A. It was.

Q45. And that was about the time when Rhodes Lockwood entered into possession of everything that A. A. Waterman & Co. had? A. Yes.

2387 Q46. And among the things taken over were the trademarks "Standard," "Reliable" and "Sterling"? A. Yes.

Q47. What occurred in reference to the formation of the Sterling Pen Company? A. Mr. Lockwood did not care to use the name A. A. Waterman & Co. and asked for suggestions as to a name for the new company. Of course there were a number of names suggested and he finally adopted "Sterling Fountain Pen Company."

Q48. Then the Sterling Fountain Pen Company took ovet these patents? A. They were never transferred. Of course the Sterling Pen Company was not incorporated; it was simply a branch of the Davidson Rubber Company.

Q49. Did Mr. Lockwood at that time take over the name
2388 A. A. Waterman & Co.? A. Yes.

Q50. Did he continue to sell pens under that name? A. Yes.

Q51. What was done with reference to manufacturing pens under that name? A. Until we had new stamps made they were all manufactured and stamped A. A. Waterman & Co.

Q52. For how long did they continue to sell pens marked A. A. Waterman & Co.? A. I should say for six years at least.

Q53. Who received all the accounts of A. A. Waterman & Co. after February 1, 1899? A. From customers?

Q54. From customers? A. The Sterling Fountain Pen Company.

Q55. Who received all the bills receivable? A. The Sterling Fountain Pen Company.

Q56. And all settlements were made with the Sterling Fountain Pen Company for goods and accounts which were outstanding, for A. A. Waterman & Co., composed of Mr. Waterman and Mr. Gibson? A. Yes.

Q57. Do you know what A. A. Waterman did after that time, that is, after February 1, 1899? A. He still kept his office at Bromfield Street and tried to do a small business in fountain pens. He bought pens from the Sterling Pen Company through a third party.

Q58. How were these pens marked? A. A. A. Waterman & Co. 2390

Q59. How did he sell these pens, under what name? A. He took out the mark and marked them "A. A. Waterman maker."

Q60. Now to go back to this question of assignment. Are you positive that this assignment that was made by A. A. Waterman & Company, composed of A. A. Waterman and E. L. Gibson, assigned to Rhodes Lockwood the name A. A. Waterman & Company? A. I consider that they did.

Q61. And after Mr. Lockwood took over the business in February, 1899, he used the name A. A. Waterman & Co.? A. Yes.

Q62. Was there any objection by A. A. Waterman to the use of this name A. A. Waterman & Co.? A. I think Mr. Waterman made some objection but there was nothing ever done about it. 2391

Q63. What happened to Mr. Gibson? A. Mr. Gibson was hired by the Davidson Rubber Company as a salesman.

Q64. And Mr. Gibson went on the road? A. Mr. Gibson went on the road and stayed there until he died.

Q65. What pens did Mr. Gibson sell for the Davidson Rubber Company? A. He sold the A. A. Waterman pens as long as they lasted and after that the Sterling fountain pen.

Q66. Did the Sterling Fountain Pen Company manufacture the pens under these patents that were taken over? A. Yes.

2392 *Frederick W. Stevens*

Q67. Can you recall under what patents they manufactured these pens? A. Under the middle joint.

Q68. The middle joint patent that was taken out by A. A. Waterman. A. Yes.

Q69. Did Mr. Lockwood or the Davidson Rubber Company receive checks made to the order of A. A. Waterman and Co.? A. Yes.

Q70. And what was done with these checks?

Mr. Bacon: Objected to as the checks are the best evidence.

A. Deposited in the bank.

2393 Q71. The checks were received from customers? A. Yes.

Q72. And how were they endorsed? A. With a rubber stamp.

Q73. They were endorsed "A. A. Waterman & Co."? A. Yes, "By W. N. Lockwood, Attorney." W. N. Lockwood, Attorney, signed all the checks too. Mr. Waterman could not sign his own check.

Q74. And that had been the condition previous to February 1, 1899? A. Yes.

Q75. What happened about the orders that were sent to A. A. Waterman & Co. for pens subsequent to February 1, 1899? A. The mail was delivered at Bromfield Street for a while and Mr. Waterman sent down all the checks and held the orders for
2394 a while but finally I went up and had a talk with him and after making some slight concessions he turned everything over.

Mr. Bacon: Objected to as hearsay; Mr. Waterman is the best evidence.

A. (Continued) He turned the orders over to the Sterling Pen Company.

CROSS-EXAMINATION by Mr. Bacon:

XQ76. In what year did you first meet Mr. A. A. Waterman? A. 1896 or 1897.

XQ77. What were your relations then with Mr. Rhodes Lockwood? A. I was bookkeeper and office manager.

XQ78. What was his business? A. Manufacturing rubber goods.

XQ79. Did he manufacture pen points? A. No, sir.

XQ80. What kind of rubber goods did he manufacture? A. Hard and sott rubber, druggists' goods.

XQ81. Did he manufacture pen holders? A. Yes.

XQ82. At that time? A. Yes.

XQ83. For whom did he manufacture? A. Penholders?

XQ84. Yes? A. Anybody that wanted them made. We made a fountain pen which we sold ourselves, but we had a very slight sale for it.

XQ85. What was the name of it? A. Davidson's No. 12.

XQ86. Did Mr. Lockwood do business under his own name? 2396
A. He did business under the name of Davidson Rubber Company.

XQ87. Was that a corporation? A. Not at that time.

XQ88. When was it incorporated? A. I should say in 1903 or 1904.

XQ89. Who owned it in the beginning? A. Hamilton D. and Rhodes Lockwood.

XQ90. Brothers? A. Yes.

XQ91. Was the Sterling Fountain Pen Company a corporation? A. No, sir.

XQ92. Who owned it? A. Rhodes Lockwood.

XQ93. Did his brother have any interest? A. His brother 2397
was dead.

XQ94. When did he die? A. 1875.

XQ95. After 1875 and up to 1903 was Rhodes Lockwood the sole owner of the Sterling Fountain Pen Company? A. No.

XQ96. Who was with him? A. The Sterling Fountain Pen Company was not in existence during those times.

XQ97. When was it first in existence? A. In 1899.

XQ98. Who was the owner of the Sterling Fountain Pen Company? A. Rhodes Lockwood.

XQ99. Sole owner? A. Yes.

2398 *Frederick W. Stevens*

XQ100. Under what name had Mr. Rhodes Lockwood made fountain pens before 1899? A. Davidson Rubber Company.

XQ101. Who owned the rubber company at that time? A. Rhodes Lockwood and P. C. Lockwood.

XQ102. That is another brother? A. Yes.

XQ103. How long had P. C. been in the firm? A. From 1875 to 1895.

XQ104. When the first brother died the other brother came in; is that it? A. Yes.

XQ105. Then when you first met Mr. A. A. Waterman the Lockwood brothers were doing business under the name of the Davidson Rubber Company, manufacturing rubber goods,
2399 including pen holders; is that it? A. No.

XQ106. What were they doing? A. Mr. Rhodes Lockwood bought his brother out in 1891.

XQ107. From 1895 to 1899 was he the sole owner? A. Yes.

XQ108. Under what name was Mr. Rhodes Lockwood doing business from 1895 to 1899? A. The Davidson Rubber Company.

XQ109. And that was the only name under which he was doing business? A. Yes.

XQ110. He never did business with Mr. A. A. Waterman under the name of the Sterling Fountain Pen Company? A. No.

2400 XQ111. That was organized after Mr. Waterman left him? A. Yes.

XQ112. When did you say you first met A. A. Waterman? A. In 1896 or 1897.

XQ113. Did you have charge of the office or the factory? A. The office.

XQ114. That had nothing to do with the factory? A. Not at that time.

XQ115. In the beginning A. A. Waterman bought rubber holders of you? A. In the beginning he bought simply feeds.

XQ116. How long did he buy feeds? A. I should say three months.

XQ117. In what year would that be? A. 1896 or 1897.

XQ118. After that what did he buy? A. Complete pens—complete hard rubber parts.

XQ119. For how long did he buy of Mr. Lockwood the complete hard rubber parts? A. It might have been for a month or six weeks. Mind you, these were only samples.

XQ120. What happened after a month or six weeks? A. He made arrangements with Mr. Lockwood whereby Mr. Lockwood was to furnish material and capital and Mr. Waterman was to sell the goods.

XQ121. Mr. Waterman was sales agent for the manufacturer; was that it? A. Salesman.

2402

XQ122. Salesman? A. Yes.

XQ123. How early was that? A. I should think that was early in 1897.

XQ124. When was the A. A. Waterman Pen Company organized? A. I should say in the fall of 1897.

XQ125. Was that a corporation? A. No, sir.

XQ126. Who were the partners? A. A. A. Waterman and E. L. Gibson.

XQ127. They were the only partners? A. Mr. Lockwood never gave them any partnership rights. Mr. Lockwood really was the whole thing.

XQ128. Mr. Lockwood never claimed to be a partner in Lockwood & Gibson? A. Mr. Lockwood claimed that the business was all his; that A. A. Waterman and Gibson had no partnership rights.

2403

XQ129. Were they not partners between themselves? A. Yes.

XQ130. And as between Gibson and Waterman they were partners? A. Yes.

XQ131. And Lockwood did not claim to be a partner in that matter, did he? A. No, sir.

XQ132. Is it not a fact that Mr. Waterman and Mr. Gibson doing business under the name of A. A. Waterman Pen Company, were selling agent for pens marked A. A. Waterman

& Co. or marked Waterman Pen Company? A. They were marked A. A. Waterman & Co.

XQ133. How early were they so marked? A. When the new copartnership was formed.

XQ134. Waterman and Gibson? A. Yes.

XQ135. When did Mr. Rhodes Lockwood die? A. In 1905.

XQ136. You said in your direct-examination that Mr. Gibson came in after that injunction suit was started? A. Yes.

XQ137. Do you mean that? A. Yes.

XQ138. Don't you know that that injunction suit was started against both Gibson and Waterman? A. No, sir; that in-

2405 junction suit was started against A. A. Waterman alone; I understand it so.

XQ139. Your recollection of that is just as good as it is of anything else? A. I don't think that the papers had been made out for the A. A. Waterman & Co. when that suit was brought.

XQ140. Is it not a fact that A. A. Waterman and Gibson were already doing business as the A. A. Waterman Pen Company when that suit was begun? A. I don't think so.

XQ141. You think that L. E. Waterman first sued A. A. Waterman? A. I do.

XQ142. Alone? A. Yes.

XQ143. And that he afterwards brought in Gibson? A. Yes.

XQ144. Do you know how that could be done?

2406 Mr. Raymond: Objected to.

A. I don't see why.

XQ145. Don't you know that is impossible? A. I don't see why. The first suit was brought against A. A. Waterman as I understood.

XQ146. Were there two suits brought? A. No, but when the injunction was brought out they stopped marking their pens A. A. Waterman Pen Company.

XQ147. You stated that Mr. Gibson came in after this suit was brought. Can you tell me how under our practice that could be done?

Mr. Raymond: Objected to as the witness is not an attorney; he is only stating his recollection.

XQ148. Mr. Lockwood was not made a party to that suit as a member of the partnership of A. A. Waterman & Co.? A. No.

XQ149. Or of the Waterman Pen Company? A. No.

XQ150. And Mr. Lockwood never claimed to be a partner with A. A. Waterman? A. No, sir; A. A. Waterman assigned everything to Mr. Lockwood in the beginning before he started business.

XQ151. Was it by written assignment? A. Yes.

XQ152. Did you see it? A. I did. 2408

XQ153. Did you see it signed? A. I did.

XQ154. When? A. I could not give you the date but just before Mr. Lockwood sailed for Europe.

XQ155. What year? A. 1897.

XQ156. Where? A. In 19 Milk Street, Mr. Lockwood's office.

XQ157. Was this assignment made before the firm of Waterman and Gibson was formed? A. Yes, that was A. A. Waterman's assignment.

XQ158. That is, Mr. A. A. Waterman made an assignment before Mr. Gibson came in? A. Yes.

XQ159. The Gibson and Waterman partnership was terminated on February 1, 1899, was it not? A. Yes. 2409

XQ160. You have seen these circulars? A. Those were issued by Mr. Waterman.

XQ161. These circulars, already in evidence, issued by Mr. Waterman, dated respectively March 1, 1899, and April 20, 1899, have you not? A. Yes.

XQ162. These are the original circulars? A. Mr. Waterman issued these circulars. I have no recollection about those at all.

XQ163. Did you see them at the time they were issued? A. I don't remember seeing them until they were handed to me today.

XQ164. You will notice that it says in the circular, "On February 1, 1899, the partnership previously existing between

E. L. Gibson and myself doing business as A. A. Waterman & Co., was dissolved by mutual consent." Do you know that to be a fact? A. Yes.

XQ165. And that partnership consisted of Mr. A. A. Waterman and Mr. Gibson only? A. Yes.

XQ166. The circular further states: "Mr. Gibson had a position with the Sterling Fountain Pen Company, then starting in business, having acquired certain rights from the business of A. A. Waterman & Co.; while I continued as sole maker of fountain pens bearing my name and guarantee;" was that true? A. Yes.

2411 XQ167. Then Mr. Gibson went with the Sterling people? A. Yes.

XQ168. With Mr. Lockwood? A. Yes.

XQ169. And Mr. Waterman continued by himself? A. Yes.

XQ170. And had no relations after that with Mr. Lockwood at all? A. He bought some goods.

XQ171. That is all? A. That is all.

XQ172. And Mr. A. A. Waterman continued as sole maker of fountain pens bearing his name and guarantee? A. Yes.

XQ173. Then the statements in this circular are true? A. So far as I know.

XQ174. Then after February 1, 1899, Mr. Lockwood never had anything to do with Mr. A. A. Waterman except to sell him some goods? A. That is all and those pens were not marked
2412 A. A. Waterman & Co.

XQ175. How were they marked? A. A. A. Waterman maker.

XQ176. You do not claim that the Sterling people made any pens and marked them A. A. Waterman or A. A. Waterman & Co. after February 1, 1899? A. I do.

XQ177. How do you reconcile that with the statement in the circular that you have already sworn to be true, as follows, "While I continued as sole maker of fountain pens bearing my name and guarantee"? A. Those are marked A. A. Waterman maker. We marked ours A. A. Waterman & Co.

XQ178. How long did you do that? A. We had pens marked A. A. Waterman & Co. that probably were not sold for five or six years.

XQ179. Is it not a fact that you did not make any new pens; you simply took over what stock there was? A. We cleaned up all the pens in process and marked them A A. Waterman & Co.

XQ180. On February 1, 1899? A. Yes.

XQ181. And after that you did not make any new pens and so mark them? A. We may have; I could not tell that.

XQ182. You are not willing to swear that you ever made a new pen after February 1, 1899, and marked it A. A. Waterman & Co.? A. I told you that all the pens that were in process were made up and marked A. A. Waterman & Co. 2414

XQ183. How many would that be? A. There may be twenty-five; there may be fifty gross.

XQ184. But it is a fact that after February 1, 1899, you discontinued the manufacture of new pens marked A. A. Waterman & Co. and thereafter marked them Sterling, did you not? A. I finished up what stock there was in process and marked them A. A. Waterman & Co.

XQ185. And that is all? A. Yes.

XQ186. And sold them out? A. Yes.

XQ187. Mr. Lockwood never claimed to be the successor of the firm of Waterman & Gibson did he? A. We issued circulars in which we stated that the Sterling Fountain Pen Company were successors to A. A. Waterman & Co.—succeeding to 2415 the business of A. A. Waterman & Co.

XQ188. Are you sure of that? A. Yes.

XQ189. I read from what purports to be a circular of Rhodes Lockwood dated February 1, 1899, as follows: "The business connection existing between A. A. Waterman and the undersigned has been this day discontinued." Is that right? A. Yes.

XQ190. What was that "connection"; was it a partner or salesman? A. I suppose, as you said a while ago, that A. A. Waterman was practically a sales agent.

XQ191. He had assigned everything that he had to Mr. Lockwood but you do not claim that the partnership was dissolved on

that day between Mr. Lockwood and these people? A. Mr. Lockwood never was a partner of that concern.

XQ192. The circular also says, "I am the sole owner of the trade-marks Standard, Reliable and Sterling for fountain pens etc. and as such have made over to the Sterling Fountain Pen Company the exclusive right to manufacture the same;" is that right? A. Yes.

XQ193. But he never made over to the Sterling Pen Company the right to manufacture pens and mark them A. A. Waterman & Co.? A. The Sterling Pen Company was his own business. It would not be necessary to advertise that all over the world.

2417 XQ194. (Last question repeated)? A. It was not necessary.

XQ195. But the circular says that he has made over to the Sterling Fountain Pen Company the exclusive right to manufacture pens under the name of Sterling. Was it not as much necessary in the one case as in the other? A. I don't see why, because the whole thing was his own business.

XQ196. Is it not a fact that in settling up the relations between the firm of A. A. Waterman & Co. and Mr. Rhodes Lockwood, that Mr. Lockwood took over, on that settlement, the accounts of A. A. Waterman & Co. then due? A. The accounts of A. A. Waterman & Co. were assigned to Mr. Lockwood monthly, all the time that he was in business.

XQ197. Each month? A. Yes.

2418 XQ198. That was in payment for the goods that he furnished to A. A. Waterman & Co.? A. No.

XQ199. Wasn't it? Why were they assigned monthly? A. So that Mr. Lockwood could have his money.

XQ200. Was it not to get his pay for something? A. To get his pay in part, yes.

XQ201. Did A. A. Waterman & Co. assign their accounts to Mr. Lockwood for nothing? A. A. A. Waterman & Co. assigned their accounts to Mr. Lockwood monthly at the suggestion of our lawyer and Mr. Waterman did not object.

XQ202. What was that in payment of—money advanced? A. Certainly.

XQ203. And goods furnished? A. Yes.

XQ204. Then is it not a fact that A. A. Waterman & Co. got their goods from Mr. Lockwood and to pay for them assigned over the accounts every month? A. Yes, but the accounts were not enough to pay the bills.

XQ205. Is it a fact that the accounts were assigned over to pay the bills in part? A. Yes.

XQ206. Then is it not true that A. A. Waterman & Co. being indebted to Mr. Rhodes Lockwood for goods advanced, turned over their accounts to him every month in part payment? A. Yes.

XQ207. And that was the only relation that existed between Mr. Lockwood and A. A. Waterman & Co.? A. When A. A. 2420
Waterman & Gibson formed their partnership they assigned everything to Mr. Lockwood, to take the place of the assignment that A. A. Waterman made.

XQ208. And was not that to cover advances for goods and to secure further advances? A. That is what it was done for.

XQ209. Then from the very beginning is it not a fact that Mr. Waterman made these assignments of accounts to Mr. Lockwood for the purpose of securing him for advances? A. In part.

XQ210. In part- A. Yes.

XQ211. And that was the only relationship existing between them? A. I don't understand that.

XQ212. Was there any other relationship except that of 2421
debtor and creditor? A. No, sir.

XQ213. And when Waterman & Gibson dissolved partnership on February 1, 1899, Mr. Gibson went with Mr. Lockwood? A. Yes.

XQ214. And Mr. Waterman did not? A. No.

XQ215. And Mr. Waterman kept his own name and Mr. Gibson continued with the Sterling people? A. Mr. Waterman was already under an injunction from the New York Court not to use his own name.

XQ216. You are certain of that, are you? A. Yes.

XQ217. Just as certain as of anything that you have sworn to? A. On a fountain pen.

2422 *Frederick W. Stevens*

XQ218. On a fountain pen? A. Yes.

XQ219. You are sure he could not use the name of A. A. Waterman & Co.? A. No, sir; A. A. Waterman.

XQ220. Are you sure that under this injunction he could not use the name of A. A. Waterman? A. On a fountain pen.

XQ221. Are you sure of that? A. Yes.

XQ222. Your recollection is just as good about that as it is about the contents of these assignments? A. The assignments were right in my possession all the time.

XQ223. And you knew about this injunction? A. From what I heard. I was not present at the court when the in-
2423 junction was issued.

XQ224. Had you ever seen a copy? A. I think I did.

XQ225. Don't you know that that injunction permitted Mr. Waterman to use the name A. A. Waterman or A. A. Waterman & Co.? A. That injunction as I understand permitted him to use the name A. A. Waterman & Co.

XQ226. And nothing else? A. Yes.

XQ227. Nevertheless, on or about February 1, 1899, according to that circular, he manufactured only pens marked, "A. A. Waterman, maker, Boston"? A. That is not A. A. Waterman, is it; that is "A. A. Waterman, maker."

XQ228. Then you think he had the right to use the words, "A. A. Waterman, maker, Boston," but did not have the right to use the name A. A. Waterman alone? A. I am not sure that
2424 he put "A. A. Waterman, maker" on the pen itself.

XQ229. I show you this circular and ask you if you are prepared to swear that he did not immediately after February 1, 1899, sell pens marked "A. A. Waterman, maker, Boston"? A. I think he did.

XQ230. Then these assignments that you say were burned up in 1907, were these monthly assignments? A. Everything was burned up, the monthly assignments and the original assignments.

XQ231. What were these original assignments? A. The original assignments assigned everything to Rhodes Lockwood, all of the right, title and interest in the business and all the

accounts and good will and everything, permitting him to carry on the business in case they did not carry out their part of the program.

XQ232. And this was before the organization of the firm of Waterman & Gibson, was it? A. There was one made out then; there was another one made out afterwards.

XQ233. On what date? A. I could not tell you the date.

XQ234. Who signed it? A. As I remember it, it was signed A. A. Waterman & Co., A. A. Waterman and E. L. Gibson.

XQ235. And yet you cannot give the date? A. No.

XQ236. Can you give us a statement of how it read? A. Similar to the other; assigning everything, all of their right and 2426
good will.

XQ237. Give us your recollection of how it read? A. It assigned everything to Rhodes Lockwood, all their right, title and interest and good will and accounts receivable and gave him authority to take over the goods at a certain date, providing they had not carried out their agreement.

XQ238. Was this before the injunction or after? A. I should say that last one was after the injunction. The first one was before the injunction.

XQ239. Are you certain? A. I am certain the first one was before the injunction.

XQ240. You are not certain that the last one was before it too? A. I could not give you the date of that.

XQ241. Are you willing to swear that that assignment was 2427
not merely for security for advances by Mr. Lockwood? A. No, sir.

XQ242. It may have been for security only? A. It was to protect Mr. Lockwood.

XQ243. Was this so-called assignment, the date of which you cannot remember, to secure Mr. Lockwood for goods and money advanced? A. It was to prevent Mr. A. A. Waterman and Mr. Gibson from turning receipts in any other direction than to Mr. Rhodes Lockwood.

XQ244. And they were turned to him to pay him in part for goods advanced by him? A. Yes.

2428 *Frederick W. Stevens*

XQ245. And that was its only object? A. Yes.

XQ246. You are not prepared to swear that that so-called assignment was not in the nature of a security, to secure advances? A. No, sir.

XQ247. Did Mr. Lockwood advance the A. A. Waterman Pen Company any money, or only goods? A. Both.

XQ248. On February 1, 1899, had they paid him up in full? A. No.

XQ249. How much did they owe? A. About $10,000.

XQ250. How long had he been in advancing this sum? A. Two years; no, about a year and a half.

2429 XQ251. What did he take over in payment of that $10,000? A. He took over what material Mr. Waterman had at the Bromfield Street office.

XQ252. Then Mr. Lockwood did the manufacturing? A. After that.

XQ253. Before that, and Waterman & Co. did the selling? A. There are two parts to manufacturing fountain pens Mr. Lockwood manufactured the hard rubber holders complete and Mr. Waterman bought the gold pens and fitted the holders so that really both of them were doing manufacturing business.

XQ254. What Mr. Lockwood took over was the stock of completed pens? A. He took everything there was there, gold pens, completed pens, hard rubber holders.

2430 XQ255. Do you know whether it paid him for the $10,000 or not? A. I know it did not.

XQ256. When Waterman & Company dissolved on February 1, 1899, the good will of the name A. A. Waterman or A. A. Waterman & Co. remained in Mr. A. A. Waterman didn't it? A. No, sir.

XQ257. Did he not continue to use it? A. We considered that the assignment that Gibson and Waterman had made turned the good will over to Mr. Lockwood.

XQ258. Did those assignments specifically assign his name, A. A. Waterman, or A. A. Waterman & Co.? A. The good will of the business.

XQ259. But they said nothing about the name? A. I think they did.

XQ260. You are not sure of that? A. No.

XQ261. Then while you are not prepared to swear that there was ever any assignment of the trade name of A. A. Waterman or A. A. Waterman & Co., you are prepared to swear that on and after February 1, 1899, Mr. Waterman continued to use his own name in the manufacture and sale of fountain pens while Mr. Lockwood did not? A. Mr. Lockwood continued to use that name for five or six years.

XQ262. Only in disposing of the old stock? A. That is all. 2432

XQ263. He did not manufacture any new stock? A. He manufactured all the stock that was in process.

XQ264. That was half made? A. That was new stock.

XQ265. What would you call "in process of manufacture"? A. Hard rubber in the rough.

XQ266. When he made it in the rough and made a new pen holder didn't he put Sterling on it? A. No, because he changed the style of pen, for the Sterling Pen Company.

XQ267. He did not have any gold pens bearing the name of A. A. Waterman & Co. into which he put new rubber holders? A. We held nearly all the gold pens that Mr. Waterman bought in our safe in the office.

XQ268. Separate from the holders? A. Yes.

XQ269. How many of them were there? A. I should think 2433 there was $1,000 worth.

XQ270. How many pens would that be? A. The pens would average 50 cents apiece.

XQ271. That would be 2,000 pens? A. Yes.

XQ272. Then you made up 2,000 holders to correspond with those pens? A. We put some of those pens into holders bearing no name at all.

XQ273. Then the new holders that you manufactured bearing the name A. A. Waterman & Co. would be far less than the 2,000? A. I could not tell you about that. I had no connection with the factory at that time.

XQ274. Then you don't know anything about it? A. I know there was stock in process but I could not tell you how many.

XQ275. What do you mean by stock in process? A. Hard rubber manufactured ready to turn up into fountain pens.

XQ276. But you do not put the stamp of the pen on the holder until it is all completed? A. No.

XQ277. Then you could put on Sterling as well as Waterman? A. Yes.

XQ278. And is it not a fact that on all the new holders that you manufactured after the first of February, 1899, you put on the name Sterling? A. No, we changed the style of the Sterling fountain pen.

2435 XQ279. What name did you put on? A. We put A. A. Waterman & Co. on part of them.

XQ280. Why? A. Because they were A. A. Waterman & Company's pens.

By Mr. Raymond:

Q281. That is, their style? A. The style of the pen. If you make a piece of hard rubber in the rough you have got to turn it up to the shape that it was intended for in the first place. You cannot turn it up into a new pattern.

By Mr. Bacon:

XQ282. You knew nothing about the factory end did you?

2436 A. We were in telephonic communication all the time.

XQ283. You never had anything to do with the manufacture of the rubber goods? A. No.

XQ284. How do you know they could not take the rubber and turn it into any kind of barrel they pleased? A. I am enough of a mechanic to know that.

XQ285. Your new style of pen was an end joint pen? A. Both kinds.

XQ286. Both? A. Both, yes.

XQ287. What do you mean by both kinds? A. The end joint and middle joint.

XQ288. Couldn't you take the material that A. A. Waterman & Co. had and make them up into either end joint or middle joint pens? A. That would depend upon whether they would turn up to the same pattern.

XQ289. You never did any turning? A. No.

XQ290. Your office was not in the factory at all was it? A. No.

RE-DIRECT EXAMINATION by Mr. Raymond:

RDQ291. You testified in your cross-examination that these advances were not paid in February, 1899. Is that the reason 2438
that Mr. Lockwood entered into possession of everything? A. That is the reason that he took over the business, because he found they were losing money.

RDQ292. He not only took over what he could get hold of in the way of physical assets but he also took over the good will of the business? A. He took everything that he could have.

RDQ293. And he continued the business under that name, A. A. Waterman & Co., until these goods that were in process of manufacture were all exhausted? A. He did.

RDQ294. Do you know why he did not continue the business after that under the name of A. A. Waterman & Co.? A. Because he thought that the business under A. A. Waterman & Co. might have the effect to—I don't know how to express it; 2439
the idea is a person might buy an A. A. Waterman pen thinking he had got an L. E. Waterman pen.

RDQ295. At that time what were the relations between Rhodes Lockwood and the L. E. Waterman Company? A. Perfectly friendly.

RDQ296. Did this injunction suit brought against A. A. Waterman have anything to do with the determination to abandon that name? A. The first suit?

RDQ297. Yes? A. I think it did.

RDQ298. Mr. Lockwood did not want any more lawsuits? A. He did not want any more lawsuits.

RDQ299. That is the reason why the name Sterling Fountain Pen Company was chosen? A. Yes.

RDQ300. Who paid the debts of Waterman & Gibson? A. Mr. Lockwood.

RDQ301. All the debts of Waterman & Gibson other than the debt to Mr. Lockwood himself, were paid by Mr. Lockwood? A. Mr. Lockwood paid every dollar that they owed.

RDQ302. These assignments that you have spoken of, did they provide for monthly turning over of the accounts of A. A. Waterman & Co.? A. The original assignments?

RDQ303. Yes? A. No, sir; that came up later.

2441 RDQ304. The original assignment provided for the assignment of everything to Rhodes Lockwood? A. Yes. These monthly assignments were made at the suggestion of our lawyer.

RDQ305. And these monthly assignments were also among these papers which were destroyed, as you have testified? A. Yes.

RE-CROSS EXAMINATION by Mr. Bacon:

RXQ306. On February 1, 1899, was there any assignment made? A. At the time we took the goods?

RXQ307. Yes? A. No.

RXQ308. How long before that had there been any assignment made? A. At the time of the last assignment, of the ac-
2442 counts receivable, made on January 1st.

RXQ309. And that assignment was merely an assignment of accounts? A. That was an assignment of accounts. The assignment previous to that was made by Waterman & Gibson at the time they formed their partnership.

RXQ310. At the very beginning of their partnership? A. Yes.

RXQ311. That was what you call the first or second assignment? A. The A. A. Waterman & Co. was the second assignment.

RXQ312. And the second assignment was when A. A. Waterman and Gibson formed their partnership originally, was it not? A. Yes.

RXQ313. Then you do fix a date for that second assignment as when the new firm of Waterman & Gibson was formed? A. That is what I said before.

RXQ314. And the first assignment was when Mr. A. A. Waterman first began as an individual to buy goods of Lockwood? A. Yes, that is after Lockwood had furnished him money.

RXQ315. And the second assignment was when the firm of Waterman & Gibson was formed? A. Yes.

2444

RXQ316. And all assignments after that were mere assignments of accounts? A. Yes.

RXQ317. Were there any regular assignments of these patents ever given? A. They were assigned on the application.

RXQ318. To whom? A. Rhodes Lockwood.

RXQ319. And were they issued in his name? A. Yes.

RXQ320. Are you sure of that? A. Yes.

RXQ321. What would be the dates of those assignments? A. Mr. Waterman took out those patents, I think, most of them, in 1897. I think there was one patent that Mr. Waterman took out that was assigned afterwards.

RXQ322. You have said that on February 1, 1899, Mr. Lockwood took over the good will. He did not do it under any written assignment? A. He did it under authority from Mr. Waterman's lawyer.

2445

RXQ323. Taken over verbally? A. Mr. Waterman had a lawyer there and we had a lawyer there at that time.

RXQ324. Did he assign this good will verbally on February 1, 1899? A. Verbally, so far as anything in addition to what he had already assigned.

RXQ325. And is it not a fact that the assignments merely permitted him to sell what goods they had on hand already in process of manufacture, under the name of A. A. Waterman & Co.? A. I think that assignment would have permitted him to carry on the business under that name if he had seen fit.

2446 *Frederick W. Stevens*

RXQ326. You do not know definitely? A. I am not positive on law points.

RXQ327. And you do not remember the phraseology of this verbal assignment? A. Except that it assigned everything there was to him.

RXQ328. But the name was not mentioned? A. What do you mean—when we took the goods?

RXQ329. On the first of February, 1899? A. Certainly, it was mentioned.

RXQ330. What was said about it? A. Mr. Waterman's lawyer said we had a perfect right to take the goods and use them and sell them and use the name.

2447 RXQ331. And that is all that he did say? A. That is all that I recollect.

RXQ332. It only related to the goods on hand? A. It related to all the goods that we held.

RXQ333. That you then held? A. Yes.

RXQ334. And nothing else? A. We had 2,000 gold pens down in the safe in our office.

RXQ335. And he authorized you to sell those although they bore the name of Waterman? A. Yes.

RXQ336. And that is all there was to it? A. At that verbal talk, yes.

RXQ337. And you are not prepared to say that any of those preceding assignments went any further than that verbal talk,

2448 are you? A. Those preceding assignments assigned everything that it is possible for a man to assign. If a man can assign his name, it assigned his name.

RXQ338. You don't remember the wording of those assignments? A. No.

RXQ339. You don't know that they mentioned the name of A. A. Waterman & Co.? A. Certainly they did.

RXQ340. Mentioned the trade name? A. Certainly they did; A. A. Waterman and E. L. Gibson doing business under the firm name of A. A. Waterman & Co.

RXQ341. And they assigned certain goods to Mr. Lockwood; was that it? A. Assigned everything.

RXQ342. In the body of the assignment where they assigned certain goods did they also say that he sold to Mr. Lockwood his right to make goods under his own name? A. I think the wording was that Mr. Lockwood had the right to take over and continue the business. I think that is the wording in the assignment.

RXQ343. Are you sure of that? A. No.

By Mr. Raymond:

RDQ344. Were you ever an inventor of a fountain pen? A. I invented one with Mr. A. A. Waterman.

By Mr. Bacon: 2450

RXQ345. Didn't you have a long lawsuit with L. E. Waterman Company? A. Yes.

RXQ346. What time? A. It lasted several years; I could not tell you. I think it started soon after the Sterling Pen Company was formed.

RXQ347. And continued for several years? A. Yes.

RXQ348. And it related to some infringement of their patents? A. Some infringement on the Waterman patents, of the L. E. Waterman patents. That had nothing to do with the A. A. Waterman case.

RXQ349. You say Mr. Lockwood paid the debts of A. A. Waterman & Co. Had he not guaranteed them in the beginning? A. No, Mr. Lockwood never guaranteed anything. I 2451
presume that A. A. Waterman represented that Mr. Lockwood was back of his firm, because he had no credit of his own.

RXQ350. If A. A. Waterman had no credit of his own, how could he buy this $1,000 worth of gold pens? A. I presume that he represented that Mr. Lockwood was advancing the money.

RXQ351. You don't know whether he did or not? A. I don't know. I know there were no guaranteed bills.

RXQ352. How could you know what Mr. Lockwood had guaranteed? A. Because he was one of the kind that would not do a thing of that kind without speaking of it.

RXQ353. And that is the only way you know? A. Yes.

2452 *Frederick W. Stevens*

RXQ354. You won out in your suit with the L. E. Waterman Company? A. Yes.

It is admitted that a patent for middle joint pen, No. 619,702, February 14, 1899, application filed May 26, 1897, by Arthur A. Waterman, was assigned before the issuance, to Rhodes Lockwood.

It is also admitted that a patent for fountain pen No. 633,538, application filed May 3, 1899, by A. A. Waterman and F. W. Stevens, issued September 19th, 1899, was assigned before issuance to Rhodes Lockwood.

2453 It is also admitted that A. A. Waterman took out patent No. 638,779 for a feed device, application filed August 16th, 1899, issued December 12, 1899.

It is also admitted that the A. A. Waterman Pen Company took out a trad-mark, No. 31442, registered March 29th, 1898, for a device which contained the words "A. A. Waterman Standard Fountain Pen."

By Mr. Raymond:

RDQ355. Were you the F. W. Stevens mentioned as a co-inventor with Mr. Waterman of a pump pen? A. Yes.

RDQ356. And were these patents assigned by Mr. Waterman and also by yourself to Mr. Lockwood pursuant to these assignments which you have testified to? A. Yes.

2454 RDQ357. And this trade-mark just spoken of is one of the trade-marks which was assigned to Mr. Lockwood pursuant to these assignments? A. Yes.

By Mr. Bacon:

RXQ358. These assignments, of those two patents and that trade-mark were made to repay the debt that Mr. Waterman owed Mr. Lockwood? A. In a measure, in part payment.

RXQ359. When was the name A. A. Waterman & Co., first used on a fountain pen? A. After the copartnership between Waterman & Gibson. I could not tell you the date.

RXQ360. And from that time until this, fountain pens have been manufactured and sold openly in the market bearing the

imprint A. A. Waterman or A. A. Waterman & Co., have they not? A. I did not know it until yesterday. I saw one yesterday.

RXQ361. Don't you know that they have been very largely sold in Boston throughout all these years? A. No, sir.

Mr. Raymond: Objected to as improper re-cross examination and I give notice that as to these matters the defendant makes the witness his own.

RXQ362. Have you not seen them advertised widely? A. No, sir.

RXQ363. What is your present business? A. I am not in a position at the present. 2456

RXQ364. You were with Lockwood up to 1907? A. Yes.

RXQ365. Manufacturing pens? A. Yes.

RXQ366. And kept in touch with the manufacture of different kinds of pens? A. In a measure. Of course I was in the office.

RXQ367. Do you mean to say that although you were manufacturing fountain pens in these years from say 1899 until 1907, you never knew until yesterday that pens were being manufactured and sold under the name of A. A. Waterman & Co.? A. I have never seen the name marked on a fountain pen until yesterday. I know one concern in Boston that represented itself to be agent for A. A. Waterman's Modern pen but I have never been inside the store. 2457

RXQ368. How long have you known of that concern? A. I should say for five or six years.

RXQ369. You knew then that they were selling A. A. Waterman & Co. pens? A. A. A. Watermans Modern pens.

RXQ370. And didn't you know before this that they were for sale on the market? A. While the Colonial Pen Company was in existence they were selling A. A. Watermans Modern Pens. After they went out of business I supposed the pen was gone.

RXQ371. Didn't you know that Frazer & Geyer Company were manufacturing them and that they were sold by A. A. Waterman & Co. as selling agents? A. I did not.

2458 *Frederick W. Stevens*

RXQ372. And yet you were in the fountain pen business? A. I was in the rubber business.

RXQ373. Manufacturing holders? A. The large proportion of the Davidson Rubber business was in soft rubber goods. I had charge of the office. The fountain pen business was kept separate.

RXQ374. And you had nothing to do with it? A. I had the oversight of the books, but I had a bookkeeper working on those books.

RXQ375. Then you personally were not interested in the manufacture of fountain pen holders?

2459 A. Only as being connected with the Davidson Rubber Company.

Deposition closed.

Signature waived.

Adjourned to Monday, May 1, 1911, at 11 A. M.

2460

Plaintiff's E

No. 35,048.

PROPRIETOR
ATTORNEYS

TRADE-MARK.

No. 35,048.

Registered Sept. 18, 1900.

L. E. WATERMAN COMPANY.

FOUNTAIN PENS.

(Application filed July 28, 1900.)

IDEAL

...ES:

...PROPRIETOR

UNITED STATES PATENT OFFICE.

L. E. WATERMAN COMPANY, OF NEW YORK, N. Y.

TRADE-MARK FOR FOUNTAIN-PENS.

STATEMENT and DECLARATION of Trade-Mark No. 35,048, registered September 18, 1900.

Application filed July 28, 1900.

STATEMENT.

To all whom it may concern:

Be it known that the L. E. WATERMAN COMPANY, a corporation duly organized under the laws of the State of New York, and located in the city of New York, county of New York, in said State, and doing business at Nos. 155 and 157 Broadway, in said city, has adopted for its use a Trade-Mark for Fountain-Pens, of which the following is a full, clear, and exact specification.

The trade-mark consists of the word "Ideal." This word has generally been arranged as shown in the accompanying facsimile, in which it is represented in plain block letters; but the style of letters may be changed and a different style of letters be used without altering the character of the trade-mark, the essential feature of which is the word "IDEAL."

This trade-mark has been used continuously in the business of said corporation and by its predecessors in business since the 1st day of July, 1883.

The class of merchandise to which this trade-mark is appropriated is stationery miscellany, and the particular description of goods comprised in said class upon which the said trade-mark is used is fountain-pens.

The trade-mark is usually displayed by being stamped into the barrel of the fountain-pen and on the gold pen used in the same, or by being printed in suitable colors on the labels applied to the boxes containing said fountain-pens, or by being branded, stenciled, or painted on the cases in which said fountain-pens are shipped, or by being placed in suitable colors on the show-cards, bill-heads, letter-paper, and circulars advertising said pens.

Signed this 26th day of July, 1900.

L. E. WATERMAN COMPANY.
L. E. WATERMAN,
President.

Witnesses:
PAUL GOEPEL,
M. H. WURTZEL.

DECLARATION.

State of New York, county of New York, ss:

LEWIS E. WATERMAN being duly sworn, deposes and says that he is the president of the corporation the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that said corporation has at this time a right to the use of said corporation in commerce between the United States and foreign nations, and particularly with England; that the description and facsimile presented for record truly represent the trade-mark sought to be registered.

LEWIS E. WATERMAN.

TRADE-MARK.

49,715. REGISTERED FEB. 13, 1906.

L. E. WATERMAN COMPANY.

FOUNTAIN PENS.

APPLICATION FILED MAY 5, 1905.

IDEAL

UNITED STATES PATENT OFFICE.

L. E. WATERMAN COMPANY, OF NEW YORK, N. Y.

TRADE-MARK FOR FOUNTAIN-PENS.

No. 49,715. Statement and Declaration. Registered Feb. 13, 1906.

Application filed May 5, 1905. Serial No. 4,349.

STATEMENT.

To all whom it may concern.

Be it known that the L. E. WATERMAN COMPANY, a corporation duly organized under the laws of the State of New York, and located in the city of New York, county of New York, in said State, and doing business at No. 173 Broadway, in said city of New York, has adopted for its use a trade-mark, of which the following is a description.

The trade-mark consists of the word "IDEAL."

The trade-mark has been continuously used in the business of said corporation and by its predecessors in business since the 1st day of July, 1883.

The class of merchandise to which this trade-mark is appropriated is stationery miscellany, and the particular description of goods comprised in said class upon which the said trade-mark is used is fountain-pens.

The trade-mark is usually displayed by being stamped into the barrel of the fountain-pen or on the gold pen used in the same, or by being printed in suitable colors on the labels applied to the boxes containing said fountain-pens, or by being branded, stenciled, or painted on the cases in which said fountain-pens are shipped.

L. E. WATERMAN COMPANY,
By FRANK D. WATERMAN,
President.

DECLARATION.

State of New York, county of New York, ss:

FRANK D. WATERMAN, being duly sworn, deposes and says, that he is the president of the L. E. WATERMAN COMPANY, a corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form, or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the United States and between the United States and foreign nations and particularly with England, France, Germany, Austria, Italy, Mexico, Cuba, Argentine Republic and Japan; and that the description, drawing and facsimiles presented truly represent the trade-mark sought to be registered.

FRANK D. WATERMAN.

Subscribed and sworn to before me, a notary public, this 29th day of April, 1905.

[L. S.] W. M. BONHAG,
Notary Public, (No. 121,) N. Y. Co.

TRADE-MARK.

No. 35,849. Registered Feb. 5, 1901.

L. E. WATERMAN COMPANY.

FOUNTAIN PENS.

(Application filed Jan. 2, 1901.)

UNITED STATES PATENT OFFICE.

L. E. WATERMAN COMPANY, OF NEW YORK, N. Y.

TRADE-MARK FOR FOUNTAIN-PENS.

STATEMENT and DECLARATION of Trade-Mark No. 35,849, registered February 5, 1901.

Application filed January 2, 1901.

STATEMENT.

To all whom it may concern:

Be it known that the L. E. WATERMAN COMPANY, a corporation duly organized under the laws of the State of New York, and located in the city of New York, county of New York, in said State, and doing business at No. 155 Broadway, in said city, has adopted for its use a Trade-Mark for Fountain-Pens, of which the following is a full, clear, and exact specification.

The trade-mark consists of the words "Waterman's Ideal Fountain Pen N. Y.," which words have generally been arranged as shown in the accompanying facsimile, in which they are represented in plain block letters in a horizontal line. The style of letters and the arrangement of the words may be changed, however, without altering the character of the trade-mark, the essential feature of which is the words "WATERMAN'S IDEAL."

This trade-mark has been continuously used in the business of said corporation and by its predecessors in business since the 1st day of July, 1883.

The class of merchandise to which this trade-mark is appropriated is stationery miscellany, and the particular description of goods comprised in said class upon which the said trade-mark is used is fountain-pens.

The trade-mark is usually displayed by being stamped into the barrel of the fountain-pen and on the gold pen used in the same, or by being printed in suitable colors on the labels applied to the boxes containing said fountain-pens, or by being branded, stenciled, or painted on the cases in which said fountain-pens are shipped, or by being placed in suitable colors on the show-cards, bill-heads, letter-paper, and circulars advertising said pens.

Signed this 22d day of November, 1900.

L. E. WATERMAN COMPANY
By F. D. WATERMAN,
Secy.

Witnesses:
PAUL GOEPEL,
JOSEPH H. NILES.

DECLARATION.

State of New York, county of New York, ss:

FRANK D. WATERMAN being duly sworn, deposes and says that he is the secretary of the corporation the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that said corporation has at this time a right to the use of the trade-mark therein described; that no other person, firm or corporation, has the right to such use, either in the identical form, or in any such near resemblance thereto as might be calculated to deceive; that it is used by said corporation in commerce between the United States and foreign nations, and particularly with Germany; that the description and facsimile presented for record truly represent the trade-mark sought to be registered.

FRANK D. WATERMAN.

Sworn to and subscribed before me this 22d day of November, 1900.

[L. S.] PAUL GOEPEL,
Notary Public, N. Y. County.

TRADE-MARK.

No. 49,478. REGISTERED FEB. 6, 1906.

L. E. WATERMAN COMPANY.

FOUNTAIN PENS.

APPLICATION FILED MAY 5, 1905.

WATERMAN'S IDEAL FOUNTAIN PEN N.Y.

UNITED STATES PATENT OFFICE.

L. E. WATERMAN COMPANY, OF NEW YORK, N. Y.

TRADE-MARK FOR FOUNTAIN-PENS.

No. 49,478. Statement and Declaration. Registered Feb. 6, 1906.

Application filed May 5, 1905. Serial No. 4,350.

STATEMENT.

To all whom it may concern:

Be it known that the L. E. WATERMAN COMPANY, a corporation duly organized under the laws of the State of New York, and located in the city of New York, county of New York, in said State, and doing business at No. 173 Broadway, in said city of New York, has adopted for its use a trade-mark, of which the following is a description.

The trade-mark consists of the words "WATERMAN'S IDEAL FOUNTAIN PEN, N. Y."

The trade-mark has been continuously used in the business of said corporation and by its predecessors in business since the 1st day of July, 1883.

The class of merchandise to which this trade-mark is appropriated is stationery miscellany, and the particular description of goods comprised in said class upon which the said trade-mark is used is fountain-pens.

The trade-mark is usually displayed by being stamped into the barrel of the fountain-pen or on the gold pen used in the same, or by being printed in suitable colors on the labels applied to the boxes containing said fountain-pens, or by being branded, stenciled, or painted on the cases in which said fountain-pens are shipped.

L. E. WATERMAN COMPANY,
By FRANK D. WATERMAN,
President.

DECLARATION.

State of New York, county of New York, ss:

FRANK D. WATERMAN, being duly sworn, deposes and says that he is the president of the L. E. WATERMAN COMPANY, a corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form, or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the United States and between the United States and foreign nations and particularly with England, France, Germany, Austria, Italy, Mexico, Cuba, Argentine Republic and Japan; and that the description, drawing and facsimiles presented, truly represent the trade-mark sought to be registered.

FRANK D. WATERMAN.

Subscribed and sworn to before me, a notary public, this 29th day of April, 1905.

[L. S.] W. M. BONHAG,
Notary Public, (No. 121,) N. Y. Co.

TRADE-MARK.

No. 59,703. REGISTERED JAN. 15, 1907.

L. E. WATERMAN COMPANY.

FOUNTAIN PENS, FEEDS, CAPS, AND BARRELS THEREFOR.

APPLICATION FILED AUG. 2, 1906.

WATERMAN'S

UNITED STATES PATENT OFFICE.

L. E. WATERMAN COMPANY, OF NEW YORK, N. Y.

TRADE-MARK FOR FOUNTAIN-PENS, FEEDS, CAPS, AND BARRELS THEREFOR.

No. 59,703. Statement and Declaration. Registered Jan. 15, 1907.

Application filed August 2, 1906. Serial No. 21,300.

STATEMENT.

To all whom it may concern:

Be it known that the L. E. WATERMAN COMPANY, a corporation duly organized under the laws of the State of New York, and located in the city of New York, county of New York, in said State, and doing business at No. 173 Broadway, in said city of New York, has adopted for its use the trade-mark shown in the accompanying drawing.

The trade-mark has been continuously used in our business since the 1st day of July, 1883.

The class of merchandise to which the trade-mark is appropriated is Class 70, Stationery not otherwise classified, and the particular description of goods comprised in said class upon which said trade-mark is used is fountain-pens, fountain-pen feeds, fountain-pen caps, and fountain-pen barrels.

The trade-mark is usually displayed on the packages containing the goods by placing thereupon a printed label on which the same is shown or branding, stenciling, painting, stamping, or imprinting the same on the packages containing the goods or upon the goods themselves.

L. E. WATERMAN COMPANY,
By F. D. WATERMAN,
President.

DECLARATION.

State of New York, county of New York, ss:

FRANK D. WATERMAN, being duly sworn, deposes and says that he is the president of the L. E. WATERMAN COMPANY, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said L. E. WATERMAN COMPANY to be the owner of the mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said mark is used by said L. E. WATERMAN COMPANY in commerce among the several States of the United States and between the United States and foreign nations, or Indian tribes, and particularly with England, France and Germany; that the drawing presented truly represents the mark sought to be registered; that the specimens show the mark as actually used upon the goods; and that the mark has been in actual use as a trade-mark of the applicant and applicant's predecessors from whom title was derived for more than ten years next preceding the passage of the act of February 20th, 1905, and that, to the best of his knowledge and belief, such use has been exclusive.

FRANK D. WATERMAN.

Subscribed and sworn to before me this 9th day of October, 1906.

[L. S.] STOCKBRIDGE BACCHUS,
Notary Public, Kings County.
Certificate filed in New York County.

Plaintiff's Exhibit 9.

2521

IMPORTANT NOTICE

After our stock of Modern Fountain Pens, at present manufactured, is disposed of we will drop the name "A. A. Waterman & Co." from the Modern line, and these pens will be imprinted as follows:

MIDDLE JOINT HOLDERS

"Middle Joint Modern
Modern Pen Co.—New York.
Pat'd Dec. 12, 1899."

AUTOMATIC SELF-FILLING HOLDERS

"Automatic Self-Filling Modern.
Modern Pen Co.—New York.
Pat'd Dec. 12, '99, and Nov. 17, '03."

ALL MODERN GOLD PENS

"Modern—New York" and the number of the pen.

We will also drop the Numbers 20 and 22—list prices $2.00—from the Modern line when the present manufactured stock is sold, and thereafter the lowest priced Moderns will list at $2.50.

2522

If you desire the "A. A. Waterman & Co." imprint on the Moderns or wish a stock of these lower priced models before the supply is exhausted, you should place your orders at once for immediate or future delivery.

MODERN PEN CO.

April 1, 1908.

2523

2524 **Plaintiff's Exhibit 18, Decree in Saadi Case.**

At a Stated Term of the Supreme Court of the District of Columbia, sitting in Equity and held in the Court House of the District of Columbia, on the 5th day of December, 1910.

Present: Hon. Wendell P. Stafford, Justice.

L. E. WATERMAN COMPANY, Complainant, against JOHN SAADI, Defendant.	Filed Dec. 5th, 1910. J. R. Young, Clerk. No. 28,987.

2525

This cause came on to be finally heard at this, the November Term of the said Court, upon the pleadings and proofs, and was argued by counsel for the respective parties, and the Court being advised in the premises, and upon consideration, and after due proceedings had, it is adjudged, ordered and decreed as follows:

1. That now you, the said John Saadi, and John Saadi doing business under the name and style of The Egyptian Diamond Jewelry Company, the defendant above named, and your attorneys, servants, employees, agents, clerks, salesmen and all persons taking or holding under, from or through you, are hereby
2526 strictly enjoined and restrained perpetually from

(a) Infringing the complainant's trade-mark "Waterman's Ideal Fountain Pen, N. Y.," or infringing the complainant's trade-mark "Ideal," or infringing the complainant's trade-mark the representation of a globe, and from manufacturing or selling fountain pens (other than fountain pens of complainant's manufacture) having the said trade-marks, or either of them, or any counterfeit, simulation or colorable imitation thereof, on such fountain pens, whether on the holder or on the gold pen or on labels, boxes, signs, letter heads, bill heads, circulars or adver-

tisements accompanying or used in connection with the making or selling of such fountain pens, or in any manner whatsoever.

(b) Using in connection with the business of making or selling fountain pens (other than fountain pens of complainant's manufacture), on such fountain pens, whether on the holder or on the gold pen, or on the labels, boxes, signs, letter heads, bill heads, circulars or advertisements or in any manner whatsoever the word "Waterman," "Waterman's" or "Watermans" alone; or the word "Waterman," "Waterman's" or "Watermans" whether the same be or be not coupled with the initials "A. A." or with the initial "A" or whether or not the same be or be not used in collocation with the word "Pen" or "Fountain Pen," or 2528 other descriptive word or words, unless accompanied by words which conspicuously, clearly and unmistakably distinguish such fountain pens from those of complainant's manufacture.

2. And it is further adjudged, ordered and decreed that a writ of injunction issue perpetually enjoining and restraining the above named defendant John Saadi and John Saadi doing business under the name and style of The Egyptian Diamond Jewelry Company, his attorneys, servants, employees, agents, clerks, salesmen and all persons taking or holding under, from or through them, all as aforesaid.

3. That heretofore, to wit, as early as the year eighteen hundred eighty-three complainant's predecessor in business was en- 2529 gaged in the manufacture and sale of fountain pens in the City of New York, and in said year, in order to distinguish and identify his fountain pens from those of all other producers he adopted as trade-marks for his fountain pens the word "Ideal," and the words "Waterman's Ideal Fountain Pen, N. Y.," and since said date complainant and its predecessors in business used and continued to use continuously said trade-marks for their fountain pens to denote and designate and identify their fountain pens from those of all other manufacturers; that in the year eighteen hundred and ninety-six the complainant adopted as its trade-mark for fountain pens the representation of a globe which

2530 *Plaintiff's Exhibit 18*

it imprinted or stamped on its fountain pens and on the boxes in which its fountain pens are distributed and sold, and since said last mentioned date the complainant has continuously used said trade-mark to designate, indicate and identify fountain pens of its manufacture from those of all other manufacturers; that said trade-marks had become, many years prior to the beginning of this action, and have ever since continued to be the trade names by which complainant's fountain pens are generally and widely known; that heretofore and many years prior to the beginning of this action and ever since said trade-marks and trade names indicated and signified origin and indicated and signified
2531 and identified complainant's fountain pens from those of all other manufacturers; that the defendant John Saadi has violated and infringed the rights of the complainant by advertising, representing, selling and dealing in fountain pens (not of complainant's manufacture) bearing the names and marks "Royal Ideal Pen," "A. A. Waterman & Co.," which names and marks are an imitation and simulation and infringement of complainant's said trade-marks and trade-names; that the defendant, John Saadi, has violated and infringed the rights of the complainant by using the name "A. A. Waterman & Co.," and "A. A. Waterman," in connection with the advertising, selling and dealing in fountain pens not of complainant's manufacture; that the defendant, John Saddi, has violated and infringed the rights of the complainant by advertising, representing, selling and dealing in foun-
2532 tain pens (not of complainant's manufacture) marked and stamped with a device in imitation and simulation of complainant's said trade-mark the representation of a globe; that said names, marks and devices used by the defendant, as aforesaid, caused confusion in the trade, were intended to deceive and did deceive the public and cause the defendant's goods to be passed off and purchased as and for fountain pens of complainant's manufacture.

4. And it is further adjudged, ordered and decreed that the complainant is entitled to have and recover the damages which it has suffered and sustained by reason of said infringement upon

Plaintiff's Exhibit 18 2533

its rights by the defendant, as aforesaid, and by reason of the advertisement, representation or sales by the defendant of fountain pens (not of complainant's manufacture) in connection or conjunction with the names "A. A. Waterman & Co.," or "A. A. Waterman," or marked or stamped in imitation, or simulation, or infringement of complainant's said trade-marks or trade names, and to enable the Court to ascertain the damages to which the complainant is entitled, it is ordered that this cause be and the same is hereby referred to the Court Auditor, who is hereby directed to take and state an account of the damages which the complainant has suffered and sustained by reason of said defendant's acts, as aforesaid, in using "A. A. Waterman & Co." 2534
or "A. A. Waterman," or in advertising, representing, offering for sale, selling or dealing in fountain pens (not of complainant's manufacture) marked or stamped with any infringement, counterfeit, imitation or simulation of any or either of complainant's said trade-marks or trade names, and said Auditor is directed to make and state an account of said damages from the proceedings and proofs now in the cause and such other proof as may be laid before him.

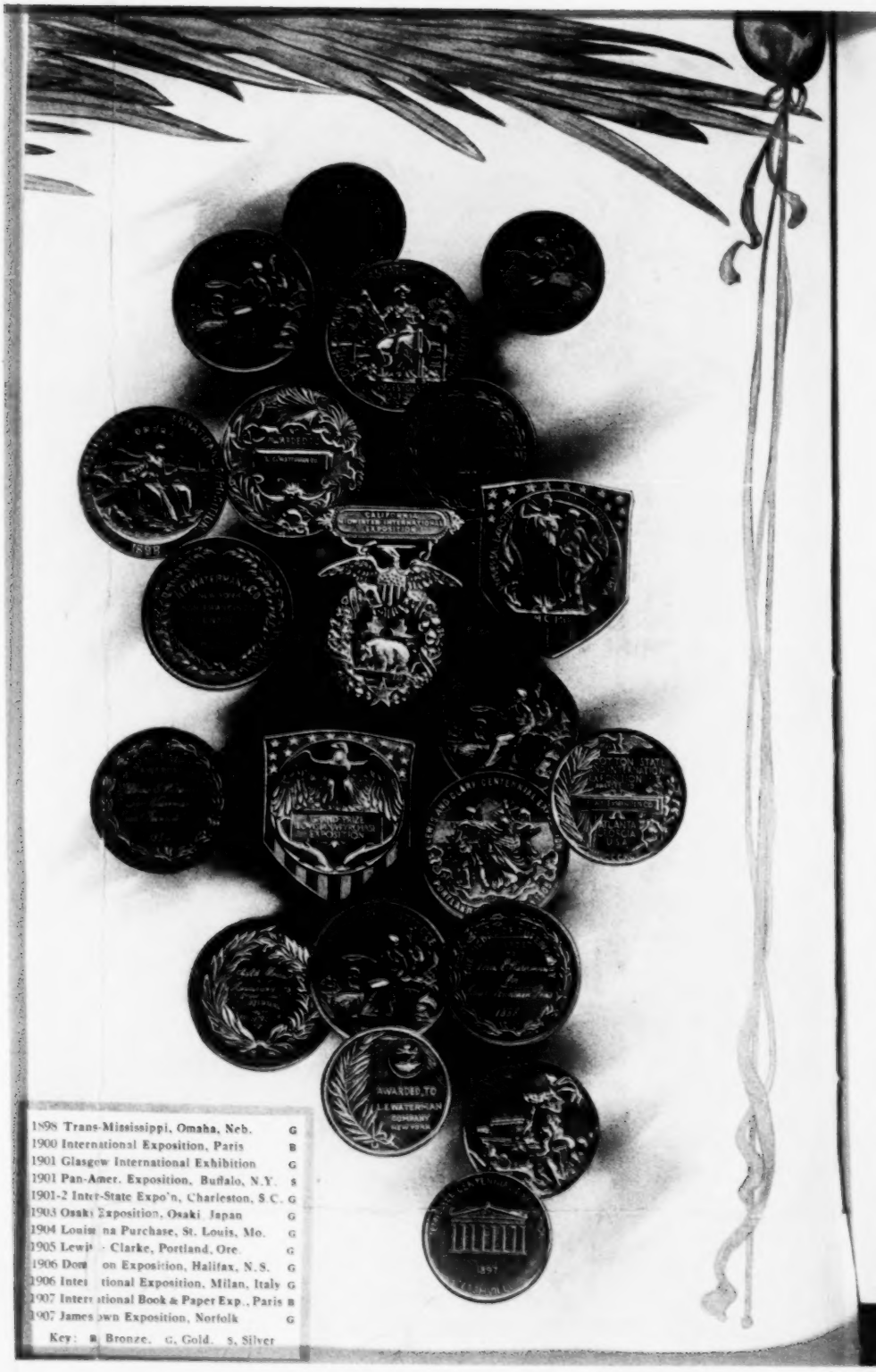
5. And it is further adjudged, ordered and decreed that the said defendant, John Saadi, pay all the costs herein to be taxed by the Clerk and that execution herein issue in favor of the complainant and against the defendant for the collection of said costs in the same manner as at law. 2535

WENDELL P. STAFFORD,
Justice.

A true copy:
Test: J. R. Long, Clerk.
by F. H. Smith, Asst. Clerk.
(Seal)

1883	Mechanics Institute, N.Y., Excellence	B
1884	Mechanics Institute, N.Y., Superiority	B
1885	Mechanics Institute, N.Y., Special	S
1886	Mechanics Institute N.Y., Superiority	B
1887	Mechanics Institute, N.Y., Superiority	B
1888	Mechanics Institute, N.Y., Superiority	B
1889	Mechanics Institute, N.Y., Excellence	B
1889	Exposition Universelle, Paris, Highest	B
1893	World's Col'bian Exposition, Chicago	B
1894	California Mid-Winter, San Francisco	G
1895	Cotton States Int'rn'tion'l, Atlanta, Ga.	G
1897	Tennessee Centennial, Nashville	G

Key: B, Bronze. G, Gold. S, Silver



1898 Trans-Mississippi, Omaha, Neb.	G
1900 International Exposition, Paris	B
1901 Glasgow International Exhibition	G
1901 Pan-Amer. Exposition, Buffalo, N.Y.	S
1901-2 Inter-State Expo'n, Charleston, S.C.	G
1903 Osaki Exposition, Osaki, Japan	G
1904 Louisiana Purchase, St. Louis, Mo.	G
1905 Lewis & Clarke, Portland, Ore.	G
1906 Dominion Exposition, Halifax, N.S.	G
1906 International Exposition, Milan, Italy	G
1907 International Book & Paper Exp., Paris	B
1907 Jamestown Exposition, Norfolk	G

Key: B, Bronze. G, Gold. S, Silver

Plaintiff's Exhibit 23.

BOOKSELLER AND STATIONER

If it is a

Waterman's Lincoln

it is all right

and has a reputation gained by giving perfect satisfaction.

In the manufacture of the

A. A. Waterman & Co.'s Pen

and has a reputation gained by giving perfect satisfaction.

In the manufacture of the

A. A. Waterman & Co.'s Pen

quality is assured, using nothing but the finest Beni Bolivian Para Rubber from Bolivia. This is the finest grade gathered in any part of the world.

The Waterman Pen Point

is made from 14 carat gold, alloyed with silver and copper; is acid proof and non-corrosive; tipped with iridium, mined in the Ural Mountains of Russia, and passes through seventy careful and delicate operations before reaching the market.

The Waterman Pen costs no more at first, and less in the end.

Canadian Agents:

Warwick Bros. & Rutter, Limited

Importing and Manufacturing Stationers

TORONTO

Plaintiff's Exhibit 24.

BOOKSELLER AND STATIONER

WHY

The New Lincoln Fountain Pen

made by

A. A. Waterman & Co.

is the most satisfactory pen for the Canadian Trade

1st **It is absolutely guaranteed by a Canadian House who do not depend on Fountain Pen business only.**

2nd **It is thoroughly high-grade in every particular.**

A. A. Waterman & Co.

is the most satisfactory pen for the Canadian Trade

1st It is absolutely guaranteed by a Canadian House who do not depend on Fountain Pen business only.

2nd It is thoroughly high-grade in every particular.

3rd It is by far the best value made.

4th We have all parts in stock and look after all repairs in Toronto.

5th A few pens may be enclosed with other goods or with any parcel from Toronto, as required.

No. 103—All styles. Retail price, $1.50

No. 503—All styles, regular $4.00 size. Retail price, $2.50

Gold mounted patterns in all styles and sizes

If you do not now carry the New Lincoln, order a sample and compare the value

---

Warwick Bros. & Rutter, Limited

Distributors for Canada **TORONTO**

Plaintiff's Exhibit 29.

Photograph of Carey's Window.

Plaintiff's Exhibit 31. 2551

Port Hope, Canada,
October 13th, 1910.

The L. E. Waterman Fountain Pen Co.,
Montreal, Que.

Gentlemen:

Under separate cover, I am sending you one of your American make self-filling Fountain Pens. This Pen seems to be clogged up. I would be obliged if you would clean it and return it to me.

I would also like to know how I can clean it. There seems to be no end to come off to get at the inside. 2552

Yours very truly,
H. C. WOTHERSPOON.

Dict. H. C. W/R.

"Dunain," Port Hope, Ont., Canada,
7th Nov., 1910.

L. E. Waterman Co., Ltd.,
Montreal, P. Q.

Dear Sirs:

Your favor of the 18th ult. came duly to hand and the pen referred to a few days later. The letter has inadvertantly remained unanswered. 2553

I did not purchase the pen myself and cannot therefore tell you if it was sold as one of your firms make, but I thought there was only ONE WATERMAN.

I have one of your pens which has been in constant use for about ten years and is as good now as it did the day I got it.

I enclose postage for the amount you had to use returning my pen.

Thanking you for your courtesy, I remain,
Yours truly,
H. C. WOTHERSPOON.

2554 **Plaintiff's Exhibit 32.**

Letterhead of

L. S. ARNOLD.

Melita, Man. Aug. 29, 1910.

The L. E. Waterman Co.,
Montreal, Que.

Sirs:

Enclosed is a Waterman pen—also note from the owner of pen explaining the difficulty.

2555 Mr. Duncan is leaving Melita on Sept. 10 so that pen will have to be back before that date.

Yours truly,

L. S. ARNOLD.

Note referred to above.

Pen has been a good one for a short time, but when I want to write fast it does not let down the ink. If I write slow it is not too bad, but as I am a fast writer it does not do the work to suit.

JAMES DUNCAN.

2556 Must have it returned to Melita before Sept. 8th as I am going away.

J. D.

Plaintiff's Exhibit 33. 2557

Letterhead of

THE CAVENDISH LUMBER COMPANY

Lakefield, Ont.

Lakefield, Jan. 12th/11.

The L. E. Waterman Co.,
Montreal, Que.

Dear Sirs:

I am forwarding under separate cover by concurrent post two pens of your manufacture which I would thank you to kindly 2558
fix. On the one pen you will notice it requires a new cap. On the other I would ask you to kindly substitute with a new hard fine pointed nib.

Kindly advise amount of the charges for the alterations and I will forward you Post Office order for the amount.

Yours truly,
A. M. CHALMERS.

Plaintiff's Exhibit 34.

Hastings, Sept. 20-10 2559

L. E. Waterman
136 St James St
Montreal Que.

Dear Sir:

We are today forwarding you by mail (Reg) two fountain pens to be repaired. Will you kindly repair these as soon as possible and advise us when you receive them.

We are

Yours truly,
GIBSON & HUYCK
"G"

2560 *Plaintiff's Exhibit 34*

Hastings, Nov. 11-10

L. E. Waterman Co. Ltd.
Montreal, Que.

Gentlemen:

You have charged us $1.00 for repairing and setting pen for McGuire. This was sold to him under guarantee, and he did not use it many times with satisfaction, consequently, he refuses to pay for repairs. We will be pleased to hear from you in regard to this.

Yours truly,
2561 GIBSON & HUYCK
G

Hastings Nov 24-10

L. E. Waterman & Son,
Montreal, Que.

Gentlemen

Re. pen for Mr. McGuire.

He bought pen in Belleville, supposing that he was getting one of your make. This is how it was returned for repairs under
2562 that understanding. Thanking you for crediting us with over charge.

We are

Yours truly,
GIBSON & HUYCK
G

Plaintiff's Exhibit 35. 2563

POSTAL CARD

Louisburg, N. S., Jany. 6th, 1911.

Please send me your catalogue of "Waterman's Fountain Pens?

Is there any difference in the L. E. and A. A. Waterman Co.?

Yours truly,
REV. JOHN MACKINNON
Louisburg, N. S.

2564

Plaintiff's Exhibit 36.

Felix Cormier, L. L. B. C. C. S.
Notary Public.

Wickham Ouest, Que 29 October 1907.

L. E. Waterman Co. of Canada,
Montreal, Q.

Sir:

Herewith fountain pen: to replace gold pen, exchange it for another, strong, reliable, point neither fine nor too coarse. This was defective from the first and never much used; slides on paper without writing, ink bubbling in tube to prevent flow of ink, comes from H. Birks, I believe. Why is name Waterman (A. A.) on these pens? which is your best pen for business men? 2565

Yours,
F. CORMIER.

2566 **Plaintiff's Exhibit 37.**

Hotel Hassard Terlauney St Toronto
April 25th 1910

The Messrs L. E. Waterman Co. Ltd.
136 St James St
Montreal

Gentlemen.

When in Montreal last week, I called at your office, to ask your advice, re leakage in my Fountain Pen, & was astonished to learn that the Pen was not of your manufacture. This Pen was presented to me by Mr. W. C. Bouden (now Supt. for
2567 Prudential Insurance Co. at Calgary) on his leaving the London District, and was bought with eleven other Pens and presented at the Tecumseh Hotel London last July. On examining the box I found it was one of your boxes, with your name & address printed on the top and Mr. Bouden's compliments written on the bottom, but the Pen instead of being an L. E. Waterman's Ideal, was made by A. A. Waterman of New York & is called the Lincoln, I don't know how you a/c for this but am convinced that Mr. Bouden presented it in good faith as the Waterman Pen represented on the box. I was so positive that the Box was one of yours that I have sent it to your office to confirm my statement & shall be glad to know what you have to say in the matter, if someone is trading on your name then
2568 I am glad if I can be of any assistance to unravel what appears to me to be a fraud on the public generally.

I am sure if you wrote to Mr. Bouden at Calgary he will tell you whether he knew at the time that he was presenting a different pen to that represented & any assistance I can give you, will be glad to do.

Believe me

Yours Very Faithfully
R. J. NEWTON

Late Asst. Supt. Prudential Insurance Co.
at London, Ont.

Plaintiff's Exhibit 39. 2569

POSTAL CARD

Neudorf Sash, Feb. 21st 1911

The Waterman Fountain Pen Co.
Montreal, Que.

Dear Sirs.

The other day we exchanged one of your pens which we are enclosing. Kindly send us a No. 12 and charge us the difference. Send one with medium point.

Sincerely yours
THE NEUDORF DRUG & BOOK CO. 2570
per H. P.

POSTAL CARD

Neudorf Sash Mch 6/11

Dear Sirs:

Re Folio 9640

The pen I returned you was bought from me & was returned 8 days afterwards as being not satisfactory. I exchanged this pen and gave my customer the fine point. This $1.48 is a loss 2571
for me.—I understood you were to exchange any pen free of charge?

I am selling many fountain pens but I never had an experience like this!

NEUDORF DRUG—BOOK CO.

2572 **Plaintiff's Exhibit 41.**

Hospital for Insane,
London, Ont., Dec. 28/09.

Messrs. L. E. Waterman Co.,
136 St. James St.,
Montreal, Que.

Dear Sirs:

A short time ago I had one of your pens presented to me, but each time I have used it, or rather tried to use it, I could get no results. The pen was new when I received it, and since having same it has had no hard usage, simply because there was
2573 little satisfaction in trying to work with such an article.

I am mailing it under separate cover and would be greatly obliged if you could inform me as to the foundation of the trouble, also what the extra cost would be for a pen whose point was a grade finer.

I remain,

Yours truly,
WILSON D. SMYTH.

Plaintiff's Exhibit 42.

2574 Levis College September 15th 09

L. E. Waterman Co. of Canada Limited
136 St James Street
Montreal, Canada.

Sir.

I have sent you the 7th of September my fountain pen because it did not suit me perfectly. The package was registered, and I had included in the letter giving the explanations about it 10 cts for the registration at the return.

I have not yet received an answer after eight days. I find that my correspondence has not received a prompt and careful attention.

Plaintiff's Exhibit 42 2575

Hoping an answer by the return of the mail and my fountain also if possible.

I remain truly yours
REVEREND EDMOND CASON
Levis College
Notre-Dame of Levis
P. Q.

Levis College Sept. 27th/09

L. E. Waterman Company, Limited 2576
136 St. James St.,
Montreal.

Sir.

I have received with pleasure your letter of the 15th, and I am very obliged to you for your explanations.

The pen A. A. Waterman that I have sent to you was given me as a gift the 24th of April, 1909. The person who has given it me has bought the pen to the firm "Searsley, Limited" Montreal. She has asked a "Waterman's Ideal Fountain Pen" and believed to receive a genuine Waterman's Ideal Fountain Pen because it was in one of your boxes containing all your explanations about the Waterman's Ideal Fountain Pen. I am very sure of it— 2577

Now I will not write to Searsley & Co. Lim. of Montreal because I think it would be useless. However I advise you of the case with pleasure, and if you could do something for me in that case I would be very obliged to you, because I would desire to have a genuine Waterman's Ideal Fountain Pen. The pen was paid $4.50

I remain truly yours
REVEREND EDMOND CASON
Levis College
Notre-Dame Levis,
P. Q.

2578 **Plaintiff's Exhibit 43.**

Letter head of M. R. & S. A. Campbell.

Winnipeg, Canada, Jan. 9th, 09.

Messrs. E. L. Waterman Co.
Montreal.

Dear Sirs:

On Dec. 17th we sent a parcel with two pens in it but addressed it to A. Waterman, Montreal. If you have not already received it kindly enquire for it and let us have it as soon as possible and oblige.

2579 Yours very truly,
W. R. & S. A. CAMPBELL.

Dict/WRC.

L. E. Waterman

Gentlemen:

We found the two fountain pens mentioned in M. M. Campbell's letter and we return them to you to be repaired.

Yours truly,
GRANGER FRERES.

2580

POST CARD.

Winnipeg, Mar. 6th, 1909.

E. L. Waterman & Co.

Gentlemen:

Have you received the box of fountain pens yet, which we addressed to A. Waterman Co., Montreal. The Post Office people told us that they were delivered to Granger Bros., Mon-

Plaintiff's Exhibit 44 2581

treal. We asked the aforesaid firm to hand them over to you. Would you kindly let us know if you have received them yet. As the owners are getting a little anxious. Awaiting your reply, we remain,

Yours truly,
W. R. & S. A. CAMPBELL.

Repair Voucher of

L. E. WATERMAN COMPANY, Limited, 2582

136 St. James St., Montreal.

April 26, 1909.

Name — W. R. & S. A. Campbell.
Address — Winnipeg, Mon.

Plaintiff's Exhibit 44.

EXCHANGE SLIP.

Name — Mr. A. E. Bennett, 2583
Address — 243 St. Elizabeth.

Note Attached read as follows:

Please exchange this pen for a stub point.
GRANGER FRERES Ltd.

2584 **Plaintiff's Exhibit 44-a.**

ENVELOPE.

(Post Office Stamp)
Fort William Ont
Sept 9
7 30 A. M.
1909

(2 cancelled Stamps)

To Waterman Fountain Pen Co.
Montreal, Que.

ENVELOPE.

2585 (Post Office Stamp)
Cedar Springs
Aug 11
09
Ont.

(1 cancelled stamp)

To Waterman Fountain Pen Co.
Montreal, Queb.

ENVELOPE.

(From)
Dr. A. P. Chown
185 Princess St.,
Kingston, Ont.

2586

(1 cancelled stamp)
(Post Office Stamp)
Kingston, Ont
Sep 22
10 P M
1909

To Waterman Fountain Pen Co.
Montreal, Que.

Plaintiff's Exhibit 44-a 2587

ENVELOPE.

(From)
S. J. Watson
Druggist
Blairmore
Alta

(1 cancelled stamp)
(Post Office Stamp)
M. Hat & Nel.
R. P. O.
Nov. 15
09
B. C.

To Waterman Fountain Pen Co.
Montreal.

2588

ENVELOPE.

G. S. Mason,
Jeweler and Watchmaker
17 Hastings St., E.
Vancouver, B. C.

(1 cancelled stamp)
(Post Office Stamp)
Vancouver, B. C.
Sep 14
3 - P M
1909

The Waterman Fountain Pen Co.
Montreal, Can.

2589

2590 *Plaintiff's Exhibit 44-a*

ENVELOPE.

Return in 10 days to
The E. Eaton Co. Limited,
Importers & Manufacturers
Toronto, Canada

(1 cancelled stamp)
(Post Office Stamp)
Toronto, Ont.
July 23
10 A M
1909

Watermans Ideal Pen Co.,
Montreal, Que.

2591 ENVELOPE.

Grand Central Hotel
T. Donley, Prop.
St. Thomas, Ont.
Turpenny & Curran

(1 cancelled stamp)
(Post Office Stamp)
St. Thomas, Ont.
Sept 28
11 A M
1909

Waterman Fountain Pen Co
Montreal, Que.

2592

Plaintiff's Exhibit 44-a 2593

ENVELOPE.

(1 cancelled stamp)
(Post Office Stamp)
Winchester
Nov 22
1909
Ont.

Wm. Bow
Winchester, Ont.

The Waterman Company
Fountain Pen Mfrs
Montreal Que.

2594

ENVELOPE.

Return to
Eastern Townships Bank,
Bromptonville,
within eight days, if not called for.

(1 cancelled stamp)
(Post Office stamp)

WATERMAN Fountain Pen Co.
Montreal, Que.

ENVELOPE.

(Post Office Stamp)
Renerew
P M
Aug 21
09
Ont.

(1 cancelled stamp) 2595

Waterman Fountain Pen Co.
Montreal, Que.

2596 *Plaintiff's Exhibit 45*

ENVELOPE.

(Post Office Stamp)
Vancouver, B. C.
Sept 6
9 - A M.
1910

(2 cancelled stamps)

To the Waterman Pen Company
Quebec Canada.

ENVELOPE.

2597 Wm. Woods,
Brompton, Ont.

(2 cancelled stamps)

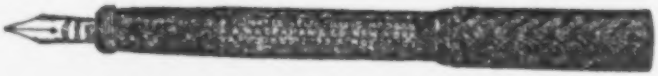
Waterman Pen Co.,
Montreal, Que.

Plaintiff's Exhibit 45.

2598

Waterman's Safety

Fountain Pens



Automatic Self-filling

BARNES & CO., LTD.

84 Prince William Street.

Plaintiff's Exhibit 46. 2599

No. B-7071.

Post Office, Montreal, 29th April, 1909.

Gentlemen:

With further reference to your communication of the 24th instant, regarding mail matter addressed to your clients, L. E. Waterman & Co., Ltd., I beg to say that all correspondence addressed to that firm will be, as in the past, duly delivered to them. Regarding correspondence addressed to A. A. Waterman & Co., however, we had taken the question up with Messrs. Granger Freres, Stationers, and they have submitted to us an authorization from the firm of A. A. Waterman & Co., New York, 2600
appointing them as their sole agent for the Modern Fountain Pens. In view of this fact anything which may reach this office addressed to A. A. Waterman & Co., (to which the firm you represent, of course, can have no claim whatever, as their initials are quite different) will be delivered to Granger Freres.

In view of the dispute regarding the matter any correspondence which may reach here not bearing the initials of the firm, but simply addressed Waterman & Co., will be returned to the senders for better direction, unless such correspondence bears the street address, or unless L. E. Waterman & Co. and Messrs. Granger Freres come to an amicable settlement, and furnish us with a statement signed by each as to whom such correspondence is to be delivered. 2601

Yours very truly,

N. S. HAMON
Postmaster.

Messrs. Davidson & Wainwright,
Advocates,
London & Lancashire Chambers,
Montreal.

2602 **Plaintiff's Exhibit 47.**

Sept. 4/06. Lawtey, Fla.

Messrs. L. E. Waterman & Co.,

Dear Sirs:

Last March I bought a self-filling pen at your place. It is the same size as my old one which I used about five years and it is still good. I gave it to a friend when I bought this. I could write all day with one filling. The new one is the same size, but it lasted only an hour when I first had it, and now it will not last half an hour, I bought it just as I was coming down here and thought I would keep it until I returned, but as I do
2603 not now expect to return at present, am sending it to you. If it will not hold as much as the old pen the same size when it is all right, would like a larger size and will send whatever is due you. I need a pen that will last all day like the old one for I frequently go away and take it with me, and I do not want to have to take an ink bottle for a day's trip. The pen itself just suits me and I would like another just like it. I am left handed, and some pens I cannot use. This is perfectly smooth. I am using an ordinary pen to write this.

Kindly return as soon as possible.

Yours truly,
MABEL GIFFORD.

2604

Lawtey, Fla., Sep. 19/06.

L. E. Waterman Co.,

Dear Sir:

The pen I sent you and which was bought for a genuine Waterman of the latest improved self-filling Waterman, and which you sent to the New York office has been returned to me with the enclosed note. I feel that there is a mistake somewhere. It seems incredible that you are selling imitation pens for the genuine, with a guaranty accompanying them. The fact

Plaintiff's Exhibit 47 2605

that you sent the pen to the N. Y. office indicates that it is one of their pens, yet they deny it, as the enclosed copy of letter to me will show you.

I have sent them a copy of guaranty and told them that the pen was sold to me for a genuine Waterman, latest improved self-filler. I think possibly some new clerk handled the business. Anyway it seems I have not the latest Waterman self-filler, so there was also a mistake at your office.

Respectfully yours,

M. GIFFORD.

2606

Lawtey, Fla. Apr. 19/06.

Mr. W. I. Ferris, Secy.
L. E. Waterman Co.,

Dear Sir:

Am much surprised to learn that your Boston office is selling poor imitations Waterman pens for genuine Waterman. Am more surprised that you permit this to be done.

There is also a guaranty accompanying pen. As you consider it no business of yours that they are carrying on affair in this manner. I am sending to them again to tell them what you say about it and to remind them of the guaranty. It says in the guaranty "if any dealer fails to respect their guaranty we request that the facts be reported." I cannot think the Boston office would send to you a pen that did not belong to you. It is an A. A. Waterman pen sold for a genuine Waterman and the latest improved make. Their sending it to you indicates that it is one of your pens. We have not learned in Boston that the Watermans pens selling at No. 8 School St. are frauds, but as I have it from head quarters that this the fact, will let Boston know it, if I get no clearer explanation from them. I feel that there is some misunderstanding and think may be some clerk made a mistake about it at your office, so I direct

2607

2608 *Plaintiff's Exhibit 47*

this to the Secretary hoping to get more satisfactory information.

If what you write is actually true I shall certainly want a new pen from you, and I hope you will get after your Boston office. If they are so unreliable it is bad for your business.

Respectfully yours,

M. GIFFORD.

GUARANTY.

2609 "We guarantee fully any pen bearing our name. This guaranty to be made good by the dealer through whom the pen is obtained, as against actual defects or faults in construction only, no matter when they become evident. If any dealer fails to respect this guaranty we request that the facts be reported."

A. A. WATERMAN & CO.

POSTAL CARD.

Lawtey, Fla. Oct. 1/06.

2610 Thank you much for your communication. Think you have solved the problem. Will try again. Regrets for trouble.

Yours truly,

M. GIFFORD.

Plaintiff's Exhibit 48. 2611

Letterhead of D. S. Phlegar.

Norfolk, Va. December 22, 1909.

Waterman Pen Co.,
Broadway,
New York City.

Gentlemen:

I am sending you under separate cover by this mail a small barrel fountain pen (short nib).

Will you please equip this holder with

A No 2 point, *medium length nib*, hard to touch, with points that will glide over paper *smoothly*. 2612

Kindly return this to me by December 29th, if possible, together with your bill for same, and oblige,

Very truly yours,
D. S. PHLEGAR.

Letterhead of D. S. Phlegar.

Norfolk, Va. January 8th, 1910.

2613

L. E. Waterman Company,
173 Broadway,
New York,

Gentlemen:

Accept my thanks for your favor of the 7th in reference to pen sent you December 22nd.

I was very much surprised some days ago to get a statement of costs from the Modern Pen Company, which seems to me a branch of A. A. Waterman, for repairs to this pen.

Plaintiff's Exhibit 49

My dealings with you in the past have always been very pleasant and satisfactory, and I am sorry that the pen was not delivered to you as it was my intention it should be.

I have not yet received the pen from the Modern Pen Company, and therefore do not know whether it is satisfactory or not. In sending the pen I directed it to "Waterman Pen Company, Broadway, New York.

Very truly yours,

D. S. PHLEGAR.

Plaintiff's Exhibit 49.

Letterhead of Henry Hall.

Sept. 29, 1909.

L. E. Waterman Co.

Dear Sirs:

Replying to yours of 28th—

By an unintended mistake in preparing my catalogue the name Ideal was used in connection with the A. A. Waterman Modern Pen. If you have my catalogue you will find that a cut of the Modern Pen is shown the name *Modern* appearing on the barrel of the Pen. I never had or sold your Ideal Pen. Have changed the name on catalogue and it will not appear when new ones are printed.

Yours, &c.,

HENRY HALL.

The cut referred to above is here reproduced.

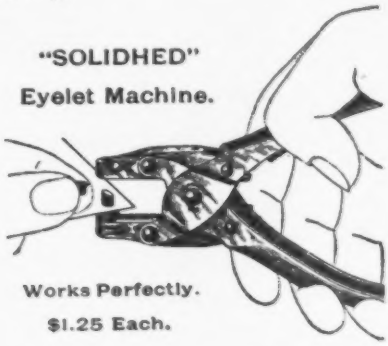
Plaintiff's Exhibit 49

FOUNTAIN PENS.

Waterman's Ideal self-filling fountain pen, the best made..... $2.50
Middle Joint Modern Pen 2.00
(Fully guaranteed to be satisfactory.)

Wirt, Parker, and other popular makes at from $1.00 to $5.00, according to finish.

"SOLIDHED" Eyelet Machine.



Works Perfectly.
$1.25 Each.

Box of 250 eyelets for same, 15 cents.

Triumph Eyelet Fastener and Punch.

Price, With 1 oz. Box of Eyelets, $2.50 Each.

EYELETS PER BOX OF 225:
B, Short, 10c. | JN, Medium, 15c. CZ, Long, 25c.

The Triumph Eyelet Fastener and Punch is a marvel of simplicity and usefulness. It combines great strength with perfect accuracy, and is free from flat or round springs that can in any way break or get out of order; although several ounces less in weight than other punches, its tensile strength is greater, and there is not sufficient power in the hand of a man to bend or break the handles. Papers, card-board, thin sheet brass, or any other soft sheet metals can be punched without danger of breaking the tool. Every punch sold is guaranteed perfect.

Plaintiff's Exhibit 50.

Letterhead of Brentano's.

CEB-KM

October 19, 1906.

Messrs. A. Waterman & Co.,
173 Broadway, City.

Dear Sirs:

We take pleasure in enclosing you a circular which you printed for us last year for distribution. We would suggest that you print us another lot for this season, say about 5000 which we will distribute to our customers.

When ready, kindly address package to Chas. E. Butler. Please deliver same before November 15th.

With kindest regards, we are,

Yours respectfully,
BRENTANO'S.

Plaintiff's Exhibit 51.

Letterhead of The Nashville Times.

Nashville, Tenn. Oct. 27, '07.

L. E. Waterman Co.,
173 Broadway, N. Y.

Dear Sirs:

Last Christmas I received as a present a fountain pen marked "Automatic, Self-filling, Modern. A. A. Waterman Co., New York." The pen has never given satisfaction and dealers here do not know how to manipulate it. Would like to know if A. A. Waterman and L. E. Waterman are the same, and if so, would be pleased to receive directions for *filling* the pen, as the printed directions that came with it contained nothing of the sort. Please mail me booklet of pen information and oblige.

Yours, etc.,
J. F. HARDING,
520 Broadway.

Plaintiff's Exhibit 52. 2623

Sodus, N. Y., Feb. 11, 1911.

Mess. L. E. Waterman & Co.,
New York City.

Gentlemen:

I am mailing you under separate cover and by registered mail today one of your fountain pens purchased through Scranton Wetmore & Co., Rochester, N. Y. a couple of years ago. The pen does not fill as it should. Please repair it and put it in good shape and return to me. Please also see that it feeds freely as it has never done so. Advise me amount of charges and I will remit promptly. 2624

Yours truly,
W. H. FOLEY.

Letterhead of The Aspegren & Gaylord Co.

Sodus, N. Y. March 2, 1911.

L. E. Waterman & Co.,
New York City, N. Y.

Gentlemen:

I am in receipt of yours of the 28th, also the fountain pen, and 2625
on looking at the pen I find that I was in error in the matter. I purchased the pen as a Waterman but I did not know until now that there are two Watermans manufacturing fountain pens. The pen is one of A. A. Waterman & Co's pens.

I am very sorry for the trouble I have caused you in the matter and hereby enclose twenty cents (.20) in stamps to cover your expense in the matter.

Very truly yours,
W. H. FOLEY.

2626 *Plaintiff's Exhibit 53*

WRAPPER.

From W. H. Foley
Sodus, N. Y.
Registered mail

L. E. Waterman & Co.
173 Broadway,
New York.

Reg. No. 351 (Stamped)
New York Regy
2627 2-12-1911

Plaintiff's Exhibit 53.

Letterhead of Broadalbin Drug Co.

Broadalbin, N. Y. Dec. 31st, 1910.

Mess. L. E. Waterman Co

Gentlemen:

2628 We are sending you by mail today one of your Fountain pens which we sold and same has been returned to us as it leaks badly. Will you kindly send us another of same kind, and oblige,

BROADALBIN DRUG CO.
Successors to
Bradford & Dickinson
and Finch & Lee.

Plaintiff's Exhibit 53 2629

Letterhead of Broadalbin Drug Co.

Broadalbin, N. Y. Jan. 6th, 1911.

Messrs. L. E. Waterman Co.

Gentlemen:

Replying to your favor of Jan. 5/11, would say, that the Pen in box marked "Florence Walsh" is the one sent by us. We sent you the pen in good faith thinking it was of your manufacture. We bought the pens of O. L. Pulman Co., a stationer in Albany thinking they were your goods. We bought a cabinet filled with an assortment of pens but we find on looking that 2630
the cabinet is marked A. A. Waterman Co. New York, some one is evidently taking advantage of the prestage enjoyed by your goods. Kindly return us the pen, and oblige,

BROADALBIN DRUG CO.
Successors to
Bradford & Dickinson
and Finch & Lee.

WRAPPER.

(Cancelled stamp) 2631

(From Broadalbin Drug Co.)
Broadalbin, N. Y.

A. A. Waterman & Co.,
173 Broadway,
New York City.

2632 **Plaintiff's Exhibit 55.**

Letterhead of Maurice Strelitz.

Milwaukee - 1-11-11

L. E. Waterman Co.,
New York.

Gentlemen:

I am sending you under separate cover, one of your pens, which is broken. Kindly fix this for me and return as soon as possible.

Yours truly,
2633 EDW. C. BOWIE,
c/o Maurice Strelitz.

WRAPPER.

Two cancelled stamps.

(Stamped)
Milwaukee
Jan.
9 P M
Wis.

2634 L. E. Waterman Co.
173 Broadway,
New York, N. Y.

If not delivered in 5 days return to
MAURICE STRELITZ
4th Floor Majestic Bldg. Milwaukee.

Plaintiff's Exhibit 56. 2635

Letterhead of
The Henry Delatush Company.

Jersey City, N. J., January 16th, 1911.

L. E. Waterman & Co.,
173 Broadway, N. Y. City.

Gentlemen:

On December 30th, I went into the jewelry store of G. D. Davidson, and asked them to sell me an L. E. Waterman fountain pen.

They gave me a pen for which I paid $5.00. On reaching the 2636
office and filling the same, I discovered that it was an A. A. Waterman pen.

Therefore I returned the same for exchange by messenger with a request that they give me a genuine L. E. Waterman pen.

They then gave me the pen I am sending you herewith with a cap that evidently does not belong to the pen, and as you can see is liable to spoil the pen point.

Under the circumstances, I do not care to have any further dealings with Davidson, and should greatly appreciate your furnishing me with another pen in exchange.

Should there be any difference in price, I shall be perfectly willing to settle for the same.

Enclose herewith check for the purchase of the pen, from 2637
Davidson.

Yours very truly,
HENRY DELATUSH.

2638 **Plaintiff's Exhibit 58.**

Letterhead of
W. H. York.

Quartz, Ga. Jan. 28, 1910.

L. E. Waterman & Co.,
New York City.

Gentlemen:

I am enclosing you a fountain pen of your make which is somewhat worse for wear. I want to exchange this pen for a pen of your make, late model. Please quote me exchange price,
2639 between this and one of your pens of later make. Quote me price between two or three models.

Very truly yours,

W. H. YORK.

Plaintiff's Exhibit 59.

Letterhead of
Waterman's Ideal Fountain Pen.

New York, July 27th, 1910.

2640 Mr. D. D. Ewing,
412 Millandon St.,
New Orleans, La.

Dear Sir:

We beg to acknowledge the receipt of your favor of July 19th also the fountain pen submitted which upon examining, we are surprised to note is not of our manufacture but imprinted "A. A. Waterman & Company, New York."

Upon examining the above we find we can place the same in working condition at an expense of 25¢. Return postage and registration will be 14¢ additional.

Plaintiff's Exhibit 59 2641

We beg to inquire if you purchased this fountain pen thinking the same to be a genuine Waterman's Ideal Fountain pen, if so, kindly give us the name and address of the dealer from whom purchased which information will be greatly appreciated.

Kindly advise us if the above attention will be satisfactory and in order to avoid our having to open accounts on our books for these small items, it is customary to request the courtesy of remittance in advance for the same and we trust you will favor us in this way when replying.

Yours very truly,

E. R. (Signed) L. E. WATERMAN CO.

2642

ANSWER.

Gentlemen:

I don't know the name and address of the dealer that it came from but thought I had a "Waterman" and was surprised when the bill came from the friend that got it for $1.55. He also expressed surprise at the price. We did not know that there were other Waterman pens than yours on the market.

Money order is attached.

Resp.

8/12/10. D. D. EWING. 2643

2644 **Plaintiff's Exhibit 60.**

Letterhead of
J. C. Mimms

Mexia, Texas 3-8-10

L. E. Waterman Co.,
New York.

Gentlemen:

Some time ago (Feb 15) I was in your Broadway store inspecting your pens, and the sales-lady said you would exchange, or take in part payment an old one—Now I have had one of
2645 your large sized pens for about five years and don't suppose I have written a dozen letters with it, as it never did write well, so I herewith return it as part payment on your Plain, Chased and Mottled pen No. 12 ($2.50) on page 11 of Catalog—I enclose page with marked pen. Let me know difference and I'll remit.

Sincerely

J. C. MIMMS

Letterhead of
J. C. Mimms,

2646 Mexia, Texas 3-17-10

Mr. L. E. Waterman
New York City.

Dear Sir:

In replying to yours of 14th inst. will say I did not purchase the pen. It was a present from a friend, and he thought it a Waterman, and so did I. Don't know from whom he bought it.

Enclosed find money order for $1.95 for which please send me pen as per your offer.

No. 12 Waterman's Ideal Fountain Pen.

Yours very truly,

J. C. MIMMS.

Plaintiff's Exhibit 60 2647

ENVELOPE

J. C. Mimms
Pastor M. E. Church, South
Mexia, Texas.

L. E. Waterman Co.,
173 Broadway,
New York City.

(Post-Office Stamp)
Mexia, Tex.
Mar 17
4 PM

2648

WRAPPER

From
J. C. Mimms
Pastor M. E. Church, South
Mexia, Texas

L. E. Waterman Co.
Broadway & Cortland St.,
New York City.

(Post-Office Stamp)
Mexia, Tex.

2649

2650 **Plaintiff's Exhibit 61.**

Madisonville-Ky.
1/5-10.

L. E. Waterman Co.

Sirs:

Am sending today to you by mail my fountain pen. Was told by a reliable party that if I would send it to you that you would repair same and return to me. Please send me the bill that you charge—and I will remit at once. Have been using pen about 2 yrs and one cold morning it would not work so I broke it. Thanking you in advance, I remain

2651 Very Respy.

MRS. T. J. STEELE
Madisonville
Ky.

Box 4.

POSTAL CARD.

Madisonville-Ky-
Feb. 14th 10.

Sirs:

2652 Examine my pen carefully and if it isn't a Waterman, just return it to me with the 2cts stamp you have left that was sent you in letter. Sorry to trouble you but am sure it is your make.

Very Respy—

MRS. T. J. STEELE.

Plaintiff's Exhibit 62. 2653

Pearce, Virginia, Feb. 1, 1911.

Waterman Fountain Pen Co.,
New York City.

Gentlemen:

Under separate cover I have mailed a fountain pen of your make which I purchased recently from one of your agents in Washington—(Walfords 9th & Ave N W) and there is something wrong with it.

Kindly repair and send bill of the cost as soon as possible.

Very truly yours,
WALTER W. BURDETTE 2654

Plaintiff's Exhibit 63.

From A. T. Hoyt,
Moravia, N. Y.

Enclosed find one of your pens that is out of order Please put in good order and return by mail.

Plaintiff's Exhibit 64. 2655

Letterhead of
Victor Allen Warren

Massena, New York, March 25 1910

L. E. Waterman Co.,
New York City.

Dear Sirs:

About two years ago I bought one of your pens and after using it a month it failed to work.

2656 *Plaintiff's Exhibit 64*

I think there is some slight dearrangement of parts that causes this and write to ask you where to send it in for repairs.

I think it is up to you to see that your pens give better satisfaction than this one did me because I put it away in disgust a month after I bought it and no doubt you will be glad to do so when given the opportunity.

Yours respectfully,
V. A. WARREN

P. S. I bought this pen while traveling in California.

2657

ENVELOPE

Victor Allen Warren
Massena, New York

L. E. Waterman Co.,
173 Broadway,
New York City.

(Post-Office Stamp)
Massena, N. Y.
Mar 25
2 PM

2658

Letter-head of
Victor Allen Warren,

Massena, New York, April 12th 1910.

L. E. Waterman & Co.,
173 Broadway, New York.

Dear Sirs:

Your favor of the 7th inst. received.

I assure you that I have never expressed anything derogatory of my pen except, perhaps, to my wife and I regret to learn

Plaintiff's Exhibit 65 2659

that there are other firms selling "Waterman" pens of inferior make on the strength of your reputation as I supposed I was buying one of your pens and my experience with it would not justify your claims for them. However, I now see my error.

I enclose you herewith 25cts in stamps for the repairs required and beg to thank you for your interest. You doubtless will infer that I shall be more careful in my next purchase.

Please repair pen and return at your earliest convenience.

Yours respectfully,

V. A. WARREN.

Enc.

2660

REPAIR VOUCHER.

Victor Allen Warren,
Massena, N. Y.

Received 3/31/10
Returned 4/5/10

Plaintiff's Exhibit 65.

Private Mailing Card of L. E. Waterman Co.
Phelps, N. Y.

2661

I now have a small stock of your Lincoln brand of Pen.

F. H. WISEWELL.

(Post-Office Stamp)
Phelps
Nov 16
4 P M
1909

2662 **Plaintiff's Exhibit 66.**

Letterhead of
Autocar Sales Co.

New York
Nov. 24th, 09.

Waterman Fountain Pen Co.
173 Broadway.

Gentlemen:

Enclosed find Pen that broke. Will you please repair same if bill will not be too much. I do not want to put much into it as
2663 it seems to be kind of rotten.

Very truly yours
CURTIS G. LEE.

ENVELOPE

Curtis G. Lee
Autocar Sales Co.
Broadway and Eightieth Street
New York

F. D. Waterman
2664 173 Broadway
N. Y. City

(Post-Office Stamp)
New York, N. Y. Sta. W.
Nov 24
8 PM
Waterman Fountain Pens.

Plaintiff's Exhibit 66 2665

Letterhead of
Autocar Sales Co.

New York,
December 2nd, 09.

Waterman Ideal Fountain Pen
173 Broadway.

Gentlemen:

Your favor of the 1st received. I purchased the pen as one of your manufacture & paid $4.00 for the same. It is also marked with your trade mark. I certainly do not wish for any more of the same goods at your price so kindly return the broken pen so I can have the pleasure of throwing it away. 2666

Very Truly Yours

C. G. LEE

ENVELOPE

C. G. Lee
Autocar Sales Co.
Broadway and Eightieth Street
New York

Waterman Ideal Fountain Pen 2667
173 Broadway
City

Repair Dept.

(Post-Office Stamp)
New York, N. Y. Sta. W.
Dec. 2
10-PM
1909

2668 **Plaintiff's Exhibit 67.**

#8112 Frankstown Ave.,
Pittsburgh, Pa., Oct. 26, 1909.

Waterman Fountain Pen Co.,
New York, N. Y.

Gentlemen:

I am sending you, under separate cover, fountain pen purchased a short time ago in this City and since using same, it is a little out of order, kindly examine it and see where the trouble lies.

Yours very truly,

2669 JWS/I. JOHN C. INNES.

Letterhead of John C. Innes

#8112 Frankstown Ave., Pittsburg, Pa.
November 26, 1909.

Messrs. L. E. Waterman Company,
#173 Broadway,
New York.

Gentlemen:

2670 Your favor of October 30th received.

The fountain pen which I submitted to you for repairs I purchased believing it to be an L. E. Waterman pen and since receiving your letter stating that it was not of your manufacture, I took the matter up with the dealer in this city, who promised to make the matter right with me, either by giving me a new pen or refunding the money. You will, therefore, kindly return the pen to my address.

Enclosed please find twelve cents in postage to cover postage and registration.

Thanking you for any inconvenience that I may have caused you in this matter, I remain,

Yours very truly,
JOHN C. INNES.

Plaintiff's Exhibit 68. 2671

Letterhead of Geo. W. Hull.

Lancaster, Pa. Oct. 16, 1909.

Mess. L. E. Watterman Company

Gentlemen:

We send you this day one of your pens for repair or a new one as it has never been satisfactory. If necessary put in new Pen and send bill to me.

Yours Truly
GEO. W. HULL

Pen by Mail. 2672

Plaintiff's Exhibit 69.

Letterhead of

JAY G. SHUMWAY,

Schuylkill Haven, Pa.
Jan. 17/10.

A. A. Waterman & Co.,
Broadway & Cortlandt Sts.,
New York. 2673

Gentlemen:

Send to you this mail under separate cover one of your pens purchased 2 years ago. Pen leaks or sweats. Pen Point scratches. Paid Wanamaker Phia. $1.25 about one year ago to repoint pen & stop leak or sweat but within a month after receiving pen again it was as bad as ever. Kindly examine pen, see if it can be put in order & advise me, also state cost.

Very truly yours
JAY G. SHUMWAY.

2674 **Plaintiff's Exhibit 70.**

Letterhead of

G. M. FINCIK CO.,

Latrobe, Penna., Sept. 8th, 1910.

L. E. Waterman Co.,
New York.

Gentlemen:

Sending you by separate cover one of your make Faunten Pen it is from the first day I wos not satisfactory. It is not
2675 strong and not Pointed good. I head one of you make I got tru Prudentiol Insurance Co. when I wos Agent. It wos first Clas. Now I like you to have this fix as falow

Put on one Gold Band on ather eand and put in good pen heavi good strong point extra good. Change the new style Filing it is no good nat naugf Ing get in if you can change this one would you change holl Barel then put the pen in same shape as you have made for Prudentiol Insurance Co.

I hope that you take tnis maier and have the pen fix good. So I would be satisfy with it. Let me here from you ot once what you can do with it. If you can nating to do with this then change for ather but good one as I can use nating but good faun-
2676 ten pen you do have good . . had one before and I lost it.

Yours truly,

G. M. FINCIK CO.

Plaintiff's Exhibit 71. 2677

Letter head of

COMMERCIAL UNION ASSURANCE COMPANY,
LIMITED.

Casselman, Ont. Agency 3rd March, 1910.

L. E. Waterman Company,
New York.

Gentlemen:

I enclose herein a pen holder for repairs and would like it done as soon as convenient. I have had trouble with this holder since I got it. I have had several of your pen outfits that gave satisfaction, but this one. 2678

If there is any charge for repairs let me know and I will remit.

Yours very truly,
R. W. F. LENDRUM.

Casselman, Ont. 19th Mar 1910

R. W. F. Lendrum,
Conveyancer, &c.,
Casselman, Ont.

L. E. Waterman Co., 2679
New York.

Gentlemen:

I mailed you by registered post my Ideal fountain pen holder for repairs on the 3rd inst and have not heard from you since.

Please let me know cause of delay.

Yours truly,
R. W. F. LENDRUM.

2680 *Plaintiff's Exhibit 72*

ENVELOPE

R. W. F. LENDRUM,
Conveyancer &c.
Casselman, Ont.

L. E. Waterman Co.
Manufacturers of Fountain Pens
Broadway, New York City,
U. S. A.

2681 **Plaintiff's Exhibit 72.**

Des Moines, Iowa,
Jan. 28, 1911.

L. E. Waterman Co.,
173 Broadway, New York, N. Y.

Dear Sirs:

Yours of the 25th at hand. The name of the dealers who referred you to me is, McCurnin Drug Co., Corner 6th and Mulberry of this City. The pen is stamped thus

A. A. WATERMAN & CO. NEW YORK
2682 MIDDLE JOINT MODERN PEN
PATENTED—DEC. 12—1899.

and the number I sent you was stamped on the pen point. The pen was given me by my father, who is a dealer in fountain pens in a small town of western Iowa, Little Sioux.

Is the L. E. Waterman and the A. A. Waterman different companies?

I believe this is all that I could tell you concerning my pen.

My father's address would be T. J. Lanyon, Little Sioux, Iowa.

Yours truly,
TERESA LANYON.

Plaintiff's Exhibit 73. 2683

Ann Arbor, Mich. 1/30/10.

L. E. Waterman Co.,
173 Broadway, New York.

Dear Sirs:

I am sending by todays mail one of your Fountain Pens. I think you can put it in shape so it will be a pleasure to use it again. In fact it never did feed perfect. Kindly examine and oblige.

Yours truly,
O. J. BURKLEY,
539 5th Ave. So. 2684
Ann Arbor, Mich.

Feby. 7, 1910.

L. E. Waterman Co.,
New York, N. Y.

Dear Sirs:

When I received your letter the first time I ever knew there was more than one Waterman Fountain Pen. At that I am not sure whether I am dealing with the "Original" or an "Imitation." Nevertheless I am inclosing Postage Stamp to cover the amount 2685
you ask. Kindly adjust the pen as best you can and return to address given below. Thanking you in advance for the accomodation, I am,

Yours truly,
O. J. BURKLEY.

P. S. Address pen to
Ruth Burkley,
539 5th Ave. So.
Ann Arbor, Mich.

2686 *Plaintiff's Exhibit 74*

ENVELOPE.

(Stamped)
East Tawas,
Feb. 7
7 P. M.
1910.
Mich.

The L. E. Waterman Company,
173 Broadway,
New York,
2687 N. Y.

Plaintiff's Exhibit 74.

CRESCENT SCHOOL DISTRICT, No. 110

Saskatchewan.

Dec. 8th, Sask., 1910.

Messrs. L. E. Waterman Co.,

Gentlemen:

2688 I have been waiting sometime for one of your advertisements in order to get your New York address. Fortunately have just caught sight of it on the cover page of the Independent Magazine Dec. 1st.

I have one of your Fountain Pens marked Self-filling Pat. Dec. 12, 1899. I think the rubber tube must be perished. I cannot get it to take up and retain the ink. The number stamped on the pen I think is (7). Can you send me by mail a new tube with instructions how to be filled or refer me to the address of one of your Canadian offices so that I could get what was needed from there. Please state cost and I will remit.

Yours respectfully,
H. F. PARTRIDGE,
Box 89 Saltcoats,
Sask.

Plaintiff's Exhibit 75 2689

ENVELOPE.

If not called for in ten days return to
W. H. Partridge
Secy.-Treas.
Crescent School District No. 110.
Saltcoates Sask.
Box 89

(Stamped)
Saltcoats
AM
Dec. 9
10
Sask.

L. E. Waterman Co.,
173 Broadway,
New York. 2690

Plaintiff's Exhibit 75.

North Dakota, Oct. 13, 1909.

L. E. Waterman Co.,
New York.

Dear Sirs:

I send you under a separate cover, to day, one fountain pen of your make, the Diamond point on one side of the pen fell out, can't use it. A Jeweler who is an Agent for your Pens tried to get the Pen out, and put in a new one, but could not move it. Enclosed find P. O. Money order for 40 cents for which please put in a new pen, or repair the old one so I can use it and oblige. Mail it to me to *Leeds, North Dakota, Gen. Dely.* and oblige. 2691

Yours truly
J. O. HULBERG.

Find enclosed Stamps
for Return of Pen.

2692 **Plaintiff's Exhibit 76.**

Bigstone, S. Dak.

Bigstone City, S. Dak.
Nov. 3, 1909.

L. E. Waterman Co.,
173 Broadway, N. Y.

Dear Sirs:

Under separate cover I am sending you one of your fountain pens which I wish repaired. The pen is bent. Send me the bill.

Yours truly,

2693 RALPH S. GOLD.

Big Stone, S. D., Nov. 11-09.

Big Stone, S. D. Nov. 11-09.

L. E. Waterman Co.,
173 Broadway, New York.

Gentlemen:

Your favor of Nov. 9th at hand. I enclose dft for $1.17 for a new gold pen. I understand the pen will be guaranteed when it is returned to me.

2694

Yours truly,
RALPH S. GOLD.

Plaintiff's Exhibit 77. 2695

Letterhead of

J. E. HEISLER,

Centerville, S. D.

Jan. 10, 1910,

Waterman Pen Co.,
New York, N. Y.

Gentlemen:

I am sending you under separate cover 1 pen for repair or rather wish to have a new pen put in the holder. 2696

Please Repair and Return.

Yours truly,

J. E. HEISLER.

Letterhead of

J. E. HEISLER,

Centerville, S. D.

Jan. 31, 1910.

2697

Waterman Pen Co.,
New York, N. Y.

Gentlemen:

Yours of recent date at hand regarding pen sent you for repair and I think you will find that the pen is your make that is why I sent it to you for repair. Inclosed find $1.00 to cover same. Please repair and return at once and oblige. (No money enclosed. E. M. H. 2/5/10.)

Yours truly,

J. E. HEISLER.

2698 *Plaintiff's Exhibit 78*

ENVELOPE.

Return in five days to
J. E. HEISLER
Pharmacist
Centerville, S. D.

(Stamped)
Centerville
Feb. 3
2 P. M.
1910
S. D.

2699

L. E. Waterman Co.,
New York, N. Y.

173 Broadway

Plaintiff's Exhibit 78.

Letterhead of

NEBRASKA TELEPHONE COMPANY.

Omaha, Neb., November 22, 1909.

2700

L. E. Waterman Co.,
173 Broadway, New York, N. Y.

Gentlemen:

Enclosed please find one of your pens which refuses to work. Kindly repair same and send me a bill and I will be glad to send you check.

Yours truly,
E. B. SCANNELL.

Plaintiff's Exhibit 79. 2701

Mt. Vernon, Wash.
Nov. 2-09.

Mr. L. E. Waterman,
New York.

Dear Sir:

I am sending you under separate cover a fountain pen which needs a new pen. I have the cap here have sent a cap with the pen which came from a cheaper pen.

I do not know what it will cost to have this pen put in so please let me know as soon as possible and I will send you a M. O. to cover cost.

As I wish to use this pen on fine work I want the pen which will make the lightest line put in. This pen with which I am writing this is your (Ideal #12 fine). 2702

Let me hear from you soon,

Yours truly,
H. H. ALLEN,
Mt. Vernon, Wn.,
Route No. 2.

Mt. Vernon, Wash., Jan., 1910.

L. E. Waterman Co.
New York, N. Y. 2703

Gentlemen:

I am in receipt of your letter of the of Dec. in which you refer to a fountain pen which I sent you some time ago.

At the time that I sent the pen to you I was under the impression that it was one of your manufacture, but if as you say, it is not I do not think that I care about it being repaired, and under the circumstances you may keep the gold pen for your trouble in the matter.

I am sorry that I was away from home and so was unable to answer your letter and thus relieve your mind of this matter.

2710 **Plaintiff's Exhibit 82.**

Letterhead of

GULICK TAILORING CO.

Champaign, Ills., Sept. 24, 1909.

Waterman Fountain Pen Company,
New York City.

Gentlemen:

We are enclosing one of your fountain pens which has the platinum off one of the points. Please repair same and return
2711 to us at once with bill.

Very truly yours,
GULICK TAILORING CO.,
A. P. G.

We have not sent the top to this pen as we are using it on another while you are repairing this one but will use it on this one when returned to us.

2712

Plaintiff's Exhibit 83. 2713

Letterhead of

FRED TILLSON,

Ishpeming, Mich., April 11th, 1910.

Messrs. L. E. Waterman Co.,
New York City, N. Y.

Gentlemen:

I consider it of business importance that I unsolicited inform you about a Fountain Pen deal which took place in my store some time ago. 2714

A travelling man called stating he represented the Waterman Company and I understanding it was the well known Waterman Ideal Fountain pen placed an order for one dozen Self Filling Pens. He never told me it was not Waterman's Ideal Pen but when I received the bill I observed the name A. A. Waterman.

I am now convinced that I was misled in this transaction and call it in plain words to obtain business under false pretenses.

It is against my business and moral principle to offer such goods to my customers, and make them believe I am selling them the well known and advertised Waterman Ideal Fountain Pen. Therefore, I will acting in my full right without delay return the pens to A. A. Waterman Company and take pleasure in placing an order with the L. E. Waterman Company for your famous Ideal Fountain Pens, the pen I thought I first was getting. 2715

Yours very truly,

F. P. TILLSON.

2716 **Plaintiff's Exhibit 84.**

Letterhead of

G. L. MANDAVILLE

Titusville, Florida, Apr. 25-10.

L. E. Waterman Co.,
New York City, N. Y.

Gentlemen:

Replying to yours of the 21st inst. regarding the "A. A. Waterman & Co. Fountain Pen," I wish to say that it was really my fault—purely an oversight—since the pen was *not* bought for an "Ideal," but seeing the name *"Waterman"* caused me to
2717 think 'twas a branch of your firm.

Regretting to have caused you to inquire concerning this, and wishing you to understand that I alone am to blame.

I beg you to remain,

Yours very truly,
G. L. MANDAVILLE,
Titusville, Florida.

Per—E. L. Wilson.

Plaintiff's Exhibit 85.

Letterhead of

2718 WILL S. COGBURN

Fort Worth, Texas, 2/11/10.

L. E. Waterman Co.
New York.

Dear Sirs:

I send you today under separate cover (1 Waterman Ideal Fountain Pen). Please have a new point put in and adjust the flow of ink.

Will remit the price on receipt of your letter.

Yours truly,
WILL S. COGBURN.

Box 1144.

Plaintiff's Exhibit 86. 2719

Letterhead of

JAS. H. McGREW.

Shelbyville, Tenn., Nov. 19, 1909.

L. E. Waterman Co.,
173 Broadway, New York.

Gentlemen:

I am sending you by registered mail pen sold to W. F. Bryant which I wish to have repaired and put in good condition and returned to me as soon as you can, and on receipt of your bill I will remit you the amount. 2720

Very respectfully,
JAS. H. McGREW.

Letterhead of

JAS. H. McGREW

Shelbyville, Tenn., Nov. 29, 1909.

L. E. Waterman Co.,
173 Broadway, New York.

Gentlemen:

Your letter of Nov. 27th enclosing bill of Nov. 26th for repairing Pen sent you has been received. I enclose you the amount 32¢ in postage stamps, and thank you for your prompt attention to my small want. 2721

I regret that I am not in position to give you an order for the Holidays as I already have in stock the A. A. Waterman, and the Akin-Lambert line. I have been informed that you all are one in the same, but only doing business under different names. When I am in the market for Fountain Pens I will consider your offer with pleasure.

Very respectfully,
JAS. H. McGREW.

2722 **Plaintiff's Exhibit 87.**

POSTAL CARD.

1507—30th St.,
Wash., D. C.

Dear Sir:

One of your pens (a "Lincoln") was given to me in the Autumn sometime and I have never been able to write with it. If I send it on will you fix it up for me? Your adds. say "Selection may be exchanged until satisfactory." I don't know when it was purchased.

Yours truly,
2723 MAY B. NEALL.

Plaintiff's Exhibit 88.

Letterhead of

S. P. TOWNSEND & CO.

Orange, N. J., Dec. 6th, 1910.

Messrs L. E. Waterman Co.,
2724 #173 Broadway, N. Y. City.

Gentlemen:

I send you herein three of your Waterman Pens and would like you to go over them and see if they are worth putting in order. If so, advise me cost of same. I think they should have new pens, but you will know just what is necessary.

Very truly yours,
GEORGE BURGESS.

Mark reply for writer—

Plaintiff's Exhibit 88 2725

Letterhead of

S. P. TOWNSEND & CO.

Orange, N. J., Dec. 8/10.

Messrs. L. E. Waterman Co.,
New York City.

Gentlemen:

Thank you for your courteous letter of the 8th.

The pens sent you on the 6th belong to one of our men here and I sent them to you thinking they were your pens. 2726

Our man is not sure where he bought them but is under the impression that one was bought at the corner of Market and Mulberry Streets, Newark, N. J. (stationery store), while the other he picked up in New York some place.

It is the writer's opinion however that he has seen these Waterman Lincoln pens on sale right here in Orange and if it is not your pen, will look it up and report to you.

Discard the two old Lincoln pens (throw them away if you like) and repair the Ideal pen as per your letter.

The party to whom the pen belongs (our foreman) is away today and on his return Monday will have him remit you the $1.54 as per your letter.

If you do not receive it drop the writer a postal when the pen is finished and will see that remittance is sent you at once. 2727

Very truly yours,

NA. GEORGE BURGESS.

My wife gave me one of your pens Christmas, 1906, and it has been in use every day since and if I could not get another one I would not sell this one to you or anyone else for half of New York.

2728 **Plaintiff's Exhibit 89.**

New Braunfels, Texas.
January 19th 1911

L. E. Waterman Company,
173 Broadway, N. Y.

Dear Sirs:

Per even mail I am sending you my Fountain Pen for repair, re-filling device out of order. This pen was bought by me from the San Antonio Drug Co. with a guarantee.

Pleased to have the pen back as soon as ready, I am

Yours truly,

2729 FELIX KLAPPENBACH.

WRAPPER.

Felix Klappenbach
New Braunfels, Tex.

L. E. Waterman Co.
173 Broadway, New York, N. Y.

(2 cancelled stamps)

2730

Plaintiff's Exhibit 90. 2731

Letterhead of

LOUIS F. DOW COMPANY,

Saint Paul, January 31, 1911.

L. E. Waterman Company,
173 Broadway,
New York City, New York.

Gentlemen:

We are mailing you under separate cover by registered mail one of your fountain pens. Kindly repair as per marked on envelope and return at your earliest convenience and oblige, 2732

Very truly yours,
LOUIS F. DOW CO.,
per A. J. DORN, JR.

Plaintiff's Exhibit 91.

Letterhead of

CHAS. MENGES

Wichita Kans. 1/21-11 2733

L. E. Waterman Co.,
New York,
173 Broadway.

Under separate Cover I am sending you Fountain Pen which leaks, and after it is carried in the pocket and not while writing, kindly repair same if possible and return.

Very truly yours,
CHAS. MENGES,
Wichita, Kans.

2734 *Plaintiff's Exhibit 91*

WRAPPER.

From Chas. Menges
Wichita Kans.

L. E. Waterman Co.,
173 Broadway
New York.

Letterhead of

2735 CHAS. MENGES

Wichita Kans. 2/3-11

L. E. Waterman Co.
New York N. Y.

Gentlemen:

Your letter of the 28th, as well as the Pen received, and in reply to your letter will say that all though the amount is small as to cost of Pen never the less, if you say that it isent your make of Pen, it was bought as a Waterman Pen, at the Docum Drug Co our City where they where on display with a Big sign (the Waterman Fountain Pen) I don't believe that the Drug Co itself
2736 where selling the Pens, but had only rented space to the party, this was in the month of Sept last.

The Box I sent you the pen in was the one I got from a Local dealer that also handles your Goods and to whom I had taken the Pen for repairs, as I had broken it, and naturally supposed that they had sent it to you for repairs, I have written to a friend of mine who purchased one of the Pens at the same time and who very likely still has the Box which we got them in, and if he has will send it to you, and if it will be of any service to you, you are welcome to use it.

Very truly yours,
CHAS. MENGES,
Wichita, Kans.

Plaintiff's Exhibit 92. 2737

Galatia, K's.
Jan 16—

L. E. Waterman Co.,
New York.

Dear Sirs:

Rec'd yours of Jan 11 stating it was useless to repair pen with gold Bands. Very well if not return same.

But in reguard to other pen, the box I sent it in was a box I got a different pen in which I now have, having lost the Box this pen came in I just sent it in that Box. The pen I sent you was an A. A. Waterman pen No. 40 self filling.

2738

I supposed the Waterman pen was all same Co. having many different kinds.

Repair the one if you can and if not kindly send same to me and I will send it in to wholesale House from which it was purchased and see that they make it good.

Yours Resp.
DR. H. R. BRYAN
Galatia K's.
Barton Co.

Plaintiff's Exhibit 93.

MIDDLEBURGH, PA., POST OFFICE 2739

J. N. Brosius, P. M.

Jan. 6, 1911.

Waterman Fountain Pen Co.,
New York, N. Y.

Gentlemen:

I send you by this mail fountain pen for repairs.

If a new pen is required it should be one of the same kind the holder has now—stiff point.

Send bill and I will remit.

Respectfully,
J. N. BROSIUS.

2740 *Plaintiff's Exhibit 93*

MIDDLEBURG, PA., POST OFFICE

J. N. BROSIUS, P. M.

Jan. 18, 1911.

L. E. Waterman Co.,
New York, N. Y.

Gentlemen:

Reply to your of 17" inst. will say that the pen was repaired and returned to me by the Modern Pen Co., No. 22 Thames St.,
2741 New York, N. Y., athough package was addressed "Waterman Fountain Pen Co., New York, N. Y."

The job is a satisfactory one.

Respectfully,

J. N. BROSIUS.

MIDDLEBURG, PA., POST OFFICE,

J. N. BROSIUS, P. M.

Jan. 21, 1911.

2742 L. E. Waterman Co.,
New York, N. Y.

Gentlemen:

Replying to yours of 20" inst. will say that the pen in question is a "Waterman Ideal."

I did not know your exact address and addressed the package containing the pen to "Waterman Fountain Pen Co." which may account for delivery to the Modern Pen Co. I was anxious to have the pen repaired by the maker, and the package was intended for your firm.

Respectfully,

J. N. BROSIUS.

Plaintiff's Exhibit 94. 2743

Letterhead of C. H. Williams.

Lewistown, Montana, 12/30/10.

Waterman Pen Co.
New York City.

Gentlemen:

We are sending you under separate cover one of your pens to have point changed.

We wish to have point similar to pen enclosed as sample.

Please charge to us.

Respectfully, 2744
C. H. WILLIAMS.
A. R.

Letterhead of Modern Pen Company

Sole Selling Agent for A. A. Waterman & Co.

New York, January 6th 1911

Mr. C. H. Williams,
Lewistown, Mont. 2745

Dear Sir:

By today's mail we received an Ideal self-filling fountain pen, but there were no instructions enclosed as to what you wanted us to do with it. Please advise us at your early convenience.

Yours truly,
THE MODERN PEN COMPANY
By E. T. K.

2746 *Plaintiff's Exhibit 94*

Letterhead of C. H. Williams

Lewistown, Montana, 1/16/11.

L. E. Waterman,
173 B'way,
New York.

Gentlemen:

Your letter of 11th inst. to hand about pen that we mail you. I addresed package and letter the same but not knowing street address the pen went to Modern Pen Co. as you can see by
2747 enclosed letter.

We would much prefer to have you fix pen if you can obtain same from them.

I did not know that there were two Waterman in fountain pen business.

If you do not fix pen I enclose postage for return of letter from Modern people.

Hoping to hear from you soon, We remain,

C. H.WILLIAMS
A. R.

2748 ENVELOPE.

After 10 days return to
C. H. Williams,
Lewistown, Mont.

(Stamped) Lewistown
Jan 17
12 - M
1911
Mont.

L. E. Waterman,
173 Broadway
New York City.

Plaintiff's Exhibit 95 2749

Letterhead of Modern Pen Company

Sole Selling Agent for A. A. Waterman & Co.

New York, January 23, 1911.

The L. E. Waterman Co.,
173 Broadway, City.

Gentlemen:

Your letter of the 21st instant in regard to a pen received by us from C. H. Williams, Lewistown, Montana, received, and as per your request, we hand you the pen herewith. 2750

We wrote Mr. Williams for instructions as to this, but presume he wrote to you instead of to us in regard to it.

Yours truly,
THE MODERN PEN COMPANY.
Hobart W. Geyer,
Treasurer.

Plaintiff's Exhibit 95.

F. Morrow,
Walder, Texas. 2751

Walder, Texas. 2/27/1911.

Messrs. L. E. Waterman Co.
New York,

Gentlemen:

You will find enclosed one of your pens with something wrong with filler and would be glad to have repaired.

Would like to have a pen a little coarser and not so stiff put in place of one in pen. Don't know what your charges are for this work but will send by return mail if you will send bill.

Repair as soon as possible and return and oblige.

F. MORROW.

2752 *Plaintiff's Exhibit 96*

WRAPPER.

From
Box 48,
Walder, Texas.

L. E. Waterman Co.
173 Broadway,
New York, N. Y.

(three cancelled stamps)

2753

Plaintiff's Exhibit 96.

Edwards, Miss. Dec. 22, 1910.

Waterman Fountain Pen Co.
New York,

Dear Sirs:

I am sending you under separate cover 1 fountain pen which leaks and will ask you to kindly repair same. I purchased this pen about two years ago from Geo. M. Book & Co., Tullahoma and as it is one of your best pens I can't understand why it should leak.

2754 Kindly repair same as soon as possible and if there is any charges kindly notify me and I will remit for same.

Yours truly,
J. P. WILLIAMSON.

P. S. The point is a little bent and will ask you to straighten same.

Plaintiff's Exhibit 97. 2755

Syracuse, N. Y. Apr. 18, 1910.

Waterman & Co.,
N. Y.

Gentlemen:

I send you today by mail 2 of your pens for repair. Please put them in first class condition and as soon as you receive them send me the bill and will send check for the same so you will receive it by the time you have them repaired.

Yours very truly,
L. L. SPENCER.

2756

I think a good deal of them and hope you will fix them in good shape.

Syracuse, N. Y., April 25th, 1910.

L. E. Waterman Company,
173 Broadway,
New York, N. Y.

Messrs:

I am in receipt of your favor of the 21st. in answer to my letter of the 18th relative to repairing two fountain pens sent you on the 18th. Please repair the Waterman's Ideal by re-pointing the gold pen and replacing the broken cap. Also repair the gold pen in the other holder, which is not of your manufacture. The repairs to be made as per your suggestions in your letter above referred to. I had supposed that both pens sent you were of your manufacture. I am unable to give you the name and address of the dealer from whom they were purchased. Enclosed herewith you will find my check for $1.25 in payment of the repairs. 2757

Yours respectfully,
L. L. SPENCER.

622 Park Avenue.

2758 **Plaintiff's Exhibit 98.**

Detroit, Apr. 18, 1910.

Waterman Fountain Pen Co.

Gentlemen:

I am sending you in separate package one fountain pen that I purchased in the City of Milwaukee and it does not write good and I have not had a chance to get to Milwaukee since I got it, I send it to you for repairs. I paid $3.50 for the pen. Will you please repair same and send to me at following ad.

C. N. HARTMAN, First Officer,
Str. John T. Hutchinson,
2759 Marine P. O.
Detroit, Mich.

Very truly yours,
C. A. H.

Houghton, Mich. April 27, 1910.

Waterman Fountain Pen Co.
New York.

Gentlemen:

Your letter rec'd and noted. In reply will say I do not re-
2760 member the concern I bought the pen of but I thought I was buying one of your pens seeing the name on the pen. However, I enclose you $1.20 and you can put on new pen and mail *not registered* to same address as before. Please mail at once.

Very truly yours,
C. A. HARTMAN
S. S. John T. Hutchinson,
Marine P. O.
Detroit, Mich.

Plaintiff's Exhibit 99. 2761

Letterhead of John M. Roberts & Son Company

435-437 Market Street,

Pittsburgh, Pa. June 17th, 1910.

L. E. Waterman Company,
173 Broadway,
New York,

Dear Sirs:

Your letter of June 7th at hand. Drawing sent you is the exact size of the sign we wished made. It was to be used on a panel on a counter in the most conspicuous part of our store, 2762 therefore no ordinary sign would suit as the counter is occupied only by your pen case. It is all real mahogony with marble trimmings and would cost possibly $150.00. This counter we had made to match the pen case you so kindly sent us when we first installed your line. In a prominent store like ours we could not use anything but the very best that money could buy, therefore the only question is whether you would get enough benefit of the same in the way of advertising your pens to justify your expense. The 5 foot model pen you speak of would not be suitable for our place at all and as regards to the words Ideal in the Waterman pen that can be added in some way to the design that we sent you if you so desire, but 95% of the people in our city buying your pens speak of them as Watermans Fountain pens. 2763 We would also like to have a couple of cuts of your Fountain pen a narrow one so we can use in both single and double column adds. We do not wish a large cut as we wish to use your pen add in connection with other advertising and not to make a separate advertisement of it. If you have a printed copy of some of the cuts you have kindly sent it to us and we can pick out just the kind of an add that we wish.

Yours,

JOHN M. ROBERTS & SON CO.

Dict. J. M. R.

2764 **Plaintiff's Exhibit 99-a.**

Letterhead of McGee Brothers Company

Jackson, Mich. Jan. 29 1904.

L. E. Waterman Company,
173 Broadway,
New York, N. Y.

Gentlemen:

I am sending you today, under separate cover, one "modern" A. A. Waterman, fountain pen, which was purchased as being one of your pens, in the following way:

Several days before Christmas the women employees of our factory, bought from G. G. Case, a Jeweler of this city, three
2765 Waterman Ideal Fountain Pens, one for a present to each member of the firm. Several days ago the Vice President brought his pen to me and asked what ailed it. He said he had tried to use it several times, but every time it acted so badly that he was inclined to think *Waterman* pens were no good. I looked the pen over and saw that it was a pen made by A. A. Waterman, and asked to see the box in which it came. The box has your name on the inside, and I am sending the pen back to you in that box. Thinking that perhaps the girls may have been imposed upon, I took occasion to look at the pens which were given the President and Secretary, and found that they were both your pens, and that they came in your boxes. I then approached the girl who bought the pens, and asked her what she asked the jeweler for. She said the rest of the girls had instructed her
2766 to purchase the Waterman Ideal Fountain Pens, as they understood them to be the best made. I did not tell her that one of the pens was a fraud, fearing to hurt the feelings of the balance of the girls, but there is no doubt that Mr. Case cheated her, passing off an inferior pen for one of yours.

Therefore, I ask that you make this matter good, but would request that you will not let the matter come to the ears of our factory girls, as it might seem to them that the recipient of their present was not pleased with it. You will appreciate the position, I have no doubt. The Vice President can afford to buy a fountain pen if he wants one, but after his experience with what he thought a *Waterman*, he does not want one.

Let me hear from you at your convenience.

Yours truly
STEWART D. HAUK

Plaintiff's Exhibit 126.

2767

Subpoena in due form to Witness Lutzer.

Plaintiff's Exhibit 127.

SUPREME COURT,

NEW YORK COUNTY.

HOBART W. GEYER and WILLIAM G. FRAZER,
Plaintiffs,

2768

vs.

ARTHUR A. WATERMAN and GRATZ NATHAN,
as Receiver of William G. Frazer,
Defendants.

State of New York,
County of New York, } ss.:

William G. Frazer and Hobart W. Geyer, being severally duly sworn, depose and say, and each for himself says, that they are members of the firm of A. A. Waterman & Co., composed of plaintiffs and defendant Arthur A. Waterman; that they have read the complaint herein, and the same is in all respects true, 2769
except as to the statements therein made on information and belief, and as to those statements they believe it to be true.

And deponents further say that they are stockholders and officers of the Frazer & Geyer Company, a corporation organized and doing business under the laws of the State of New York and engaged in the manufacture of fountain pens, and which corporation is intimately associated with the firm of A. A. Waterman & Co.; that said corporation has a contract with A. A. Waterman & Co., under which it manufactures all the fountain pens sold by A. A. Waterman & Co., and largely controls the business of said copartnership.

2770 *Plaintiff's Exhibit 127*

That for some time last past the corporation of Frazer & Geyer Company has been in financial difficulties and recently an attempt has been made to re-organize such corporation, and which has not as yet been successful.

That these plaintiffs are minority stockholders in said corporation and have expressed a willingness to reorganize said company on the lines and plans of the majority stockholders, and have signed an agreement so to do; that notwithstanding such fact an attempt is now being made by the majority interests in said Frazer & Geyer Company to acquire by unfair means, as these deponents believe, the interests of deponents in
2771 said Frazer & Geyer Company, with the purpose among others of controlling said firm of A. A. Waterman & Co., that in order to acquire such interests said parties have caused several litigations to be instituted against these deponents and against A. A. Waterman & Co., and among other things have obtained a judgment against the plaintiff William G. Frazer.

And deponents further say, that they are informed and believe, from conversations had with the defendant Arthur A. Waterman, and with the majority interests in said Frazer & Geyer Company, and from his conduct in the premises, that said defendant Arthur A. Waterman is doing all he can to aid and abet and help said majority interests in the said Frazer & Geyer Company, to acquire by fair means, or unfair means, the
2772 control of A. A. Waterman & Co., with some ulterior purpose in view, and what that purpose is deponents do not know, but believe it to be for the financial advantage of said defendant Arthur A. Waterman.

And deponents further say that annexed hereto is a copy of a letter received from Alexander S. Bacon, the attorney for the majority interests in said Frazer & Geyer Company, which shows on its face the arbitrary stand of said controlling interest, and the attempt made to acquire the stock of these plaintiffs therein on terms which they deem unjust, unfair and inequitable.

And deponents further say that as a part of the scheme to carry out the threats made under said letter, by implication, at least, their partner, said defendant Arthur A. Waterman, has

arbitrarily and without right, usurped the management of said firm of A. A. Waterman & Co. contrary to the express terms of the agreement; has stopped the mail and diverted it from the usual channels to himself, and has threatened to liquidate said firm.

And deponents further say that they believe said Waterman to be a man of no financial responsibility and unable to respond to them in damages, and that the effect of his diverting the mail from the business of A. A. Waterman & Co. would be, in their judgment, destructive of such business, which consists of the sale of fountain pens through salesmen and through orders received by mail; that very little of the business of said firm is done directly, the amount thereof not exceeding in sales in the New York office two per cent of the whole business, and the result of defendant Arthur A. Waterman usurping the management of the business, and diverting the mail from its usual channel is to practically destroy it. 2774

And deponents further say that unless some remedy is afforded by injunction or receivership so that the business may be continued, and orders filled as received from time to time, the delay and interference with customers in their orders to supply the trade will be such as to jeopardize the whole future of said business, if not to wholly destroy it.

And deponents further say that the reason why an order to show cause is desired herein rather than the usual notice, is that immediate protection is necessary to fully secure said business from the interference of defendant Arthur A. Waterman, and to continue it as a business, and that even the delay necessary for the usual notice would cause loss therein. 2775

That no other application has been made to any court or judge for the order sought herein.

And deponents further say that through their attorneys they have requested the defendant Gratz Nathan as the Receiver in supplementary proceedings of the plaintiff William G. Frazer herein, to joint with plaintiffs herein, and that on such request being made, said receiver expressed a hesitation to join with the plaintiffs, unless after first conferring with the attorney for

2776 *Plaintiff's Exhibit 127*

the judgment creditor, and after such conference applying for leave of the court.

And deponents further say that they were duly authorized by order of the City Court of the City of New York, duly entered on the 14th day of June, 1905, to bring this action against defendant Gratz Nathan as Receiver in supplementary proceedings of the plaintiff William G. Frazer and who as such Receiver has, or may claim to have some interest in the co-partnership assets of said A. A. Waterman & Co., as Receiver of said William G. Frazer.

HOBART W. GEYER
WM. G. FRAZER

2777 Sworn to before me this
14th day of June, 1905.
C. A. D. Utench,
Notary Public,
New York Co.

2778

Plaintiff's Exhibit 128. 2779

SUPREME COURT,

NEW YORK COUNTY.

HOBART W. GEYER and WILLIAM G. FRAZER,
Plaintiffs,

vs.

ARTHUR A. WATERMAN and GRATZ NATHAN,
as Receiver in Supplementary Proceedings
of William G. Frazer,
Defendants. 2780

The plaintiffs herein, by Straley & Hasbrouch, their attorneys, respectfully show to this Court:

1. That the plaintiffs herein and the defendant Arthur A. Waterman entered into certain articles of copartnership under date of January 9, 1901, a copy of which articles of co-partnership is hereto annexed marked Schedule A.

2. That said articles of co-partnership were modified by endorsement thereon under date of December 12th, 1901, a copy of which modification is hereto annexed marked Schedule B.

3. That said copartnership has continued up to the present 2781
time, except as modified by certain articles of agreement between the parties thereto annexed marked Schedule C.

4. That under and pursuant to the terms of said articles of copartnership it was expressly provided, as by reference thereto will more fully appear, that these plaintiffs jointly should have the entire control of the business, except that the defendant Arthur A. Waterman should have authority in the following matters, viz; the styles and quality of all goods made on which the name of A. A. Waterman & Co. should appear, list and net prices and terms to the trade, and further in that by said modi-

2782 *Plaintiff's Exhibit 128*

fication of December 12, 1901, it was provided that said defendant should continue to travel and act as salesman as theretofore, which he had been in the habit of doing, the parties to have equal authority in all prices and terms of sale, and the plaintiff William G. Frazer to have the general management of the business.

5. Plaintiffs further show that notwithstanding said provisions in the contract as to the management of said business on the tenth day of June, 1905, said defendant Arthur A. Waterman took possession of the mail of said firm, and as plaintiffs are informed and believe, without right or authority di-
2783 rected the Postmaster of the City of New York, to send all further mail to a different address, and threatened to proceed to liquidate the firm of A. A. Waterman & Co. and served, or caused to be served upon these plaintiffs, a notice, a copy of which is hereto annexed marked Schedule D.

6. Plaintiffs further show that the acts and conduct of said defendant Arthur A. Waterman in the premises are wholly inconsistent with the articles of co-partnership existing between plaintiffs and said defendant, arbitrary, and without right or authority, and that it will be impossible to continue said business with said defendant as a partner therein and for which reason a dissolution thereof is imperative.

2784 7. And plaintiffs further show that for some weeks last past they and the defendant Arthur A. Waterman have had numerous conferences, in which said defendant has fully been apprised of an attempt being made by parties interested in the Frazer & Geyer Company, intimately connected in business with said A. A. Waterman & Co., to acquire its control, and through the control thereof a controlling interest in the firm of A. A. Waterman & Co., and that these plaintiffs are informed and believe, that said defendant Arthur A. Waterman is acting with and on behalf of said parties, inconsistent with his relations as partners with these plaintiffs, and for the purpose of jeopardizing the interests of said firm of A. A. Waterman & Co. to the end

that it may be acquired by other parties, and that the acts and conduct on said defendants' part are such, coupled with the aforesaid threats, that the business cannot be continued successfully.

8. And plaintiffs further show that the business of A. A. Waterman & Co. consists largely in the sale of fountain pens through the distribution thereof over a large territory of the United States, as well as in foreign countries, and the business very largely consists of mail orders received through salesmen on the road, and which business could not exist but for the use of the mails for such purpose.

2786

9. That on the tenth day of June, 1905, said defendant Arthur A. Waterman arbitrarily, and without right and authority, took the mail of said A. A. Waterman & Co. from its place of business, and notified the Postmaster of the City of New York to deliver such mail elsewhere, and where neither of these plaintiffs is aware of; that such mail usually contains checks, as well as orders, and the result of the conduct of said defendant in that respect is to tie up the business and practically stop it, and that unless he is restrained from interfering with such mail and said business by the order of the Court, it must wholly cease.

10. And plaintiffs further show that the defendant Arthur A. Waterman is without pecuniary responsibility, and these plaintiffs would be without remedy for relief at law in the premises because of his inability to respond in damages.

2787

11. And plaintiffs further show that the defendant Gratz Nathan is receiver in supplementary proceedings of the plaintiff William G. Frazer, appointed by order of Hon. Edward F. O'Dwyer, one of the judges of the City Court of the City of New York, dated June 7, 1905, and entered in the office of the Clerk of the County of New York on the seventh day of June, 1905, and that before suit was brought said receiver was requested to join with plaintiffs in this action but was not com-

2788 *Plaintiff's Exhibit 128*

plied with said request and for which reason he is made defendant herein.

12. That plaintiffs were duly authorized by order of the City Court of the City of New York duly entered on the 14th day of June, 1905, to bring this action against defendant Gratz Nathan as receiver in Supplementary Proceedings of the plaintiff William G. Frazer, and who as such receiver has, or may claim to have, some interest in the co-partnership assets of said A. A. Waterman & Co. as receiver of said William G. Frazer.

Wherefore, plaintiffs demand the judgment of this Court:

2789 First: That said copartnership of A. A. Waterman & Co. be dissolved.

Second: That a receiver with the usual powers in such cases given, should be appointed.

Third: That the defendant Arthur A. Waterman herein be restrained temporarily as well as permanently from in any way interfering with the partnership assets or business of A. A. Waterman & Co., except in so far as expressly authorized so to do by the articles of co-partnership between plaintiffs and defendant Arthur A. Waterman.

Fourth: That the defendant Arthur A. Waterman be directed to restore to plaintiffs any and all mail orders or letters
2790 received and diverted by him.

Fifth: That an accounting be had of the interests of the several parties in the partnership assets of A. A. Waterman & Co. and that plaintiffs have their costs of the suit.

STRALEY & HASBROUCH,
Attorneys for Plaintiffs,
257 Broadway,
New York City,
Borough of Manhattan.

Plaintiff's Exhibit 129 2791

State of New York,
County of New York, } ss.:

Hobart W. Geyer, being duly sworn, deposes and says, that he is one of the plaintiffs above named; that he has read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

HOBART W. GEYER.

Sworn to before me this
14th day of June, 1905.
C. A. D. Utench,
Notary Public,
New York Co. 2792

Plaintiff's Exhibit 129.

SUPREME COURT,

NEW YORK COUNTY.

HOBART W. GEYER and WILLIAM G. FRAZER,
Plaintiffs, 2793

vs.

ARTHUR A. WATERMAN and GRATZ NATHAN,
as Receiver, etc.,
Defendants.

County of New York, ss.:

Hobart W. Geyer, being duly sworn, says, that he is one of the plaintiffs in the above entitled action, and listened to the argument of the motion for a receiver on Monday, June 19, 1905, and

2794 *Plaintiff's Exhibit 129*

then understood for the first time that his name was being used in a way that he did not understand.

Deponent is anxious that the affairs of the late firm of A. A. Waterman & Co. should be closed up with the least possible expense, and he verily belives that that can be done by Mr. Waterman and deponent without expense to the firm and without interference from the court.

Deponent is now advised and verily believes that the fact that Mr. Frazer's property is now in the hands of a receiver in supplementary proceedings prevents him from having anything to do with the liquidation of the firm, because his interest has been assigned (by act of law) to the receiver.

2795 Deponent verily believes that the conduct of Mr. Waterman is attempting to hasten the liquidation of the firm was in good faith and in good judgment, and deponent is perfectly willing to unite with his partner Mr. Waterman, in liquidating the affairs of the firm, without expense, and thereby saving the most possible to the creditors and the partners, if anything should be left.

Deponent wishes to withdraw as far as he possibly can from this litigation, and joins with the defendants in asking that the motion for a receiver be denied.

HOBART W. GEYER.

Sworn to before me this
21st day of June, 1905.
2796 V. M. Turner,
Notary Public,
New York County.

Endorsement: Filed July 11, 1905.

Plaintiff's Exhibit 130.

2797

At a Special Term of the Supreme Court, Part I, held at the County Court House, in the County of New York, on the tenth day of July, 1905.

Present, Hon. Leonard A. Giegerich, Justice.

HOBART W. GEYER and WILLIAM G. FRAZER,
Plaintiffs,

vs.

ARTHUR A. WATERMAN and GRATZ NATHAN,
as Receiver,
Defendants.

2798

A motion having come regularly on to be heard on the order to show cause herein dated June 14, 1905, why a receiver should not be appointed with the usual powers, of the assets of the firm of A. A. Waterman & Co. and why defendant Arthur A. Waterman should not be restrained temporarily pending this action from in any way interfering with the copartnership assets and business of A. A. Waterman & Co., it is on the summons and complaint herein, the joint affidavit of Hobart W. Geyer and William G. Frazer verified the fourteenth day of June, 1905, read in support of said motion, the affidavit of defendant Arthur A. Waterman verified the nineteenth day of June, 1905, and the affidavit of Isaac E. Chapman an intervening creditor, verified the twentieth day of June, 1905, and the affidavit of Hobart W. Geyer, verified June 21st, 1905, read in opposition to said motion, and the affidavit of William G. Frazer verified the twenty-second day of June, 1905, in reply, read in favor of said motion, and after hearing Louis B. Hasbrouch, of counsel for plaintiffs, in support of said motion, and Alexander S. Bacon, Esq., of counsel for intervening creditors, William E. Weaver, Esq., of counsel for defendant Arthur A. Waterman, in opposition thereto, the defendant Gratz Nathan as Receiver appearing and supporting said motion, and

2799

2800 *Plaintiff's Exhibit 130*

on motion of Straley & Hasbrouch, attorneys for plaintiffs, 126 Chambers Street,

Ordered, that Alexander D. Henderson be, and he hereby is, appointed receiver, *pendente lite,* of the co-partnership property, assets and effects of every kind and nature of the firm of A. A. Waterman & Co., which firm heretofore consisted of the plaintiffs in this action, and the defendant Arthur A. Waterman, upon his executing and filing with the Clerk of this Court a bond in the usual form prescribed by law, in the sum of five thousand dollars, with sufficient sureties to be approved by this Court, and when he shall have so qualified the receiver is directed to forthwith take possession of the said co-partnership
2801 property which bond shall be issued on the application of any party if the value of property received or about to be received warrants such issue, and it is further

Ordered, that the plaintiffs and the defendants do assign, transfer and deliver to said receiver on oath under the direction of Henry Kroff, Esq. (120 Bway), Counsellor at law of this court, hereby appointed Referee for that purpose, all said property, real and personal, things in action, equitable interests and other effects belonging to said co-partnership of A. A. Waterman & Co., and that they in like manner deliver to said receiver all bills, insurance, contracts, books of account and other evidences relating thereto, and under the direction of said referee the said parties execute and deliver to said receiver a gen-
2802 eral assignment of said property and effects, and it is further

Ordered that said parties appear before said referee as they shall be summoned or required to do from time to time and produce such books, papers and accounts, and to submit to such examination as said referee shall direct in relation to any matter which may be lawfully required to be disclosed, and it is further

Ordered, that the parties hereto be, and hereby are enjoined and restrained from interfering with said receiver, excepting, however, that either or any of them may be allowed upon being requested by the said receiver so to do, to assist in the winding up of said business, but only in accordance with such

specific directions as they may receive from said receiver, and in all other respects they and each of them are restrained from intermedling with or interfering with the assets or affairs of said co-partnership or this receivership, and from making any other disposition of the copartnership assets by sale, transfer or otherwise, except as herein expressly directed, and it is further

Ordered, that said receiver deposit in the Union Trust Company any sums in cash coming to his hands as such receiver, there to abide the event of this action, and not to be withdrawn without the further order of this Court, and it is further

Ordered, that application may be made at the foot of this order by any of the parties to this action for further instructions or provisions in relation to said receivership. 2804

Enter,

L. A. G.,
J. S. C.

Endorsement: Notice of Settlement, admission of service.

2806 **Plaintiff's Exhibit 131.**

SUPREME COURT OF THE STATE OF NEW YORK,

NEW YORK COUNTY.

FRAZER & GEYER COMPANY,
Plaintiff,

vs.

WILLIAM G. FRAZER, HOBART W. GEYER and ARTHUR A. WATERMAN,
Defendants.

2807 The above entitled action having come up in its regular order for trial, and an inquest having been taken and Mr. Justice Samuel Greenbaum having made and filed his Findings of Fact and Conclusions of Law:

Now upon said Findings and on motion of Alexander S. Bacon, Esq., attorney for plaintiff, it is

Ordered and decreed that the plaintiff Frazer & Geyer Company, have judgment against the defendants, William G. Frazer, Hobart W. Geyer and Arthur A. Waterman, in the sum of $12,133.40 with $13.94 to date & $151.22 costs as taxed, making a total of $12338.50 and that the plaintiff have execution therefor.

2808 Dated, New York City, June 4, 1908.

PETER J. DOOLING,
Clerk.

(Endorsement): Supreme Court, New York County. Frazer & Geyer Co. plff. vs. Wm. G. Frazer, *et al.*, defts. Orig. Judgment. Alexander S. Bacon, attorney for Plf., 37 Liberty Street, Borough of Manhattan, New York City. Filed June 4, 1908.

Plaintiff's Exhibit 132. 2809

SUPREME COURT OF THE STATE OF NEW YORK,

NEW YORK COUNTY.

Estate WILLIAM E. CHAPMAN Inc.,
Plaintiff,

vs.

FRAZER & GEYER COMPANY, WILLIAM G. FRAZER, HOBART W. GEYER and ARTHUR A. WATERMAN,
Defendants. 2810

This cause having duly come on for trial before the Honorable Peter A. Hendrick, one of the Justices of the Supreme Court of the State of New York and a jury at Trial Term, Part XIV of this Court at the County Court House in the County of New York, on the 15th day of June, 1908, and plaintiff appearing by Alexander S. Bacon, Esq., the defendant Arthur A. Waterman by William E. Weaver, Esq., and the defendant William G. Frazer by Arthur O. Townsend, Esq., and the case having been duly tried on the 15th and 16th days of June, 1908, and the jury having duly rendered its verdict in favor of the plaintiff, in the sum of $12,453 and the costs having been duly adjusted at the sum of $201.42, now on motion of Alexander S. Bacon, Esq., attorney for the plaintiff, it is 2811

Ordered and Adjudged that the plaintiff Estate William E. Chapman, Inc., recover of the defendants Arthur A. Waterman, William G. Frazer and Hobart W. Geyer, the sum of $12,453 the amount of the verdict aforesaid, together with the sum of $201.42 the costs taxed as aforesaid making a total of the sum of $12,654.42 and that plaintiff have execution therefor against the defendants Arthur A. Waterman, Hobart W. Geyer and William G. Frazer and each of them.

Judgment signed and entered this 26th day of June, 1908.

PETER J. DOOLING,
Clerk.

2812 *Plaintiff's Exhibit 133*

(Endorsement): Supreme Court, New York County. Est. Wm. E. Chapman, Inc., Plff. vs. Frazer & Geyer Co. *et al.*, Defts. Orig. Judgment Roll. Alexander S. Bacon, Attorney for plaintiff, 37 Liberty Street, Borough of Manhattan, New York City. Filed June 26, 1908.

Plaintiff's Exhibit 133.

WHEREAS the firm of A. A. Waterman & Co. in liquidation is now indebted to the Frazer & Geyer Company with sum of about $53,234.95 and is desirous of liquidating that indebtedness; and

2813 WHEREAS A. A. Waterman & Co. have the following assets of a fair and agreed valuation, viz.:

Merchandise—finished pens, parts, &c., &c., in their office, factory or elsewhere, or in the hands of salesmen	$17,000.
Accounts receivable	17,474.62
(Accounts payable not exceeding $2300):	
Furniture & fixtures in offices	1000.
Machinery	185.78
Show cases at different parts in the United States & Canada	6,000.
Disbursements for patents which have hitherto been	
2814 assigned to the Frazer & Geyer Company	3,306.22
Cash in safe and bank	307.06
Total	45,285.68

And whereas it is desirable that the firm of A. A. Waterman & Co. should liquidate its affairs as soon as possible and pay off all its creditors.

(1) Now therefore in consideration of one dollar to us in hand paid, the receipt whereof is hereby acknowledged and other good and sufficient consideration herein expressed the said firm of A. A. Waterman & Co. in liquidation hereby sells, assigns,

transfers and sets over unto the Frazer & Geyer Company all its right, title and interest in and to all of its assets of every name and nature whatsoever and especially as above set forth.

(2) In consideration of said transfer of assets the Frazer & Geyer Company hereby covenants and agrees to pay off all the creditors (except itself) of said A. A. Waterman & Co. the amount due to said creditors being hereby agreed not to exceed $2500 and to credit on the account of said A. A. Waterman & Co. the remaining sum of $42,785.68 hereby reducing the indebtedness of said A. A. Waterman & Co. to said Frazer & Geyer Company to $10,449.27.

IN WITNESS WHEREOF the Frazer & Geyer Company has caused these presents to be signed by its President and its corporate seal to be hereto affixed, and the said firm of A. A. Waterman & Co. in liquidation has hereunto set its hand and seal this 24th day of June, 1905, at the City of New York. 2816

A. A. WATERMAN,
HOBART W. GEYER,
for A. A. Waterman & Co., (in liquidation).

Plaintiff's Exhibit 134.

NEW YORK SUPREME COURT. 2817

ISAAC E. CHAPMAN, vs. FRAZER & GEYER COMPANY.	Execution issued June 10, 1905, for $20,-163.90. Alexander S. Bacon, Plaintiff's Attorney.

Sold by Joseph P. Day, Auctioneer, on June 16th, 1905, at No. 22 Thames St.

By order of Mitchell L. Erlanger, Sheriff.

FRANK J. BURNES,
Deputy.

Sale No. 219.

2818 *Plaintiff's Exhibit 135*

Lot. 1. All the right, title and interest of the Frazer & Geyer Co. which it had on the 10th day of June, 1905, or at anytime thereafter of, in and to the lease of the premises No. 22 Thames St., now occupied by them, also, Machinery and Material for manufacturing fountain pens, fixtures, patents, accounts & bills receivable and all other personal property of the Frazer & Geyer Co.

Sold for		$4900.00
To		
T. T. Quackenbush,		
17 Battery Pl.		
Auctioneer Bill		
2819 Sheriff Bill	$249.40	
Poundage	147.50	
Posting Notice	5.00	
Keepers Fee	21.00	422.90
Made on Execution		$4477.10

O. K.
Alex S. Bacon.

Plaintiff's Exhibit 135.

2820 OFFICE OF THE MODERN PEN CO.,

22 Thames St., New York.

June 21, 1905.

Mr. Wm. G. Frazer,
Brooklyn, N. Y.

Dear Sir:

The long delay in the work of the Reorganization Committee was occasioned partly on account of the tardiness of some of

the stockholders in sending their written consent to make up the necessary two-thirds, but more particularly on account of the position taken by the partners of Mr. Waterman.

In consequence of the insolvency of Mr. Frazer, the old firm of A. A. Waterman & Co. has been dissolved, and a new co-partnership with A. A. Waterman has been formed in the interest of those who have their money invested.

Upon advice of our counsel, Col. Alex. S. Bacon, the original plan of reorganization was abandoned, and actions at law were brought in which all the assets of the Frazer & Geyer Company have been sold under execution.

A new corporation, the Modern Pen Company, with a capital of $150,000, all one kind of stock, has been organized under the laws of West Virginia. 2822

The control of the new Company will be in new hands. This will overcome the objections of some who did not approve of the original reorganization plan. The Board of Directors of the new Corporation will be:

Benj. F. Jayne, Isaac E. Chapman, George T. Hay, Francis A. Wilson, William L. Chapman, A. A. Waterman, A. W. Smith.

This Modern Pen Company will acquire the manufacturing plant of the Frazer & Geyer corporation; and all stockholders in the Frazer & Geyer Co. may subscribe for stock in the new corporation upon the following terms. The Modern Pen Company will for one share of Frazer & Geyer Co. stock (whether 1st preferred, 2nd preferred, or common) and $20.00, issue one share of new stock and this contemplates that the proposed contribution of $15.00 per share be increased to $20.00 because some of the stockholders apparently will not participate in the exchange, but the participating stockholders will receive greater benefit on account of the smaller capital outstanding. The Modern Pen Co. reserves the right to withdraw this offer if remittance is not received by June 26th, 1905. 2823

You are requested to send check to the order of the Modern Pen Co., c/o I. E. Chapman, 17 Battery Place, New York City, to cover the number of shares you own, or as many thereof as you wish to subscribe for. Upon receipt of your check and certifi-

2824 *Plaintiff's Exhibit 136*

cates of Frazer & Geyer Co. stock, a certificate of new stock will be issued to you for the number of shares subscribed for. (The new shares will be full paid and non-assessable, par value $100.00.)

It is requested that checks for subscription be sent immediately, and not later than the 26th instant, so the business will not be obliged to suffer.

ISAAC E. CHAPMAN,
WM. L. CHAPMAN,
A. A. WATERMAN,
BENJ. F. JAYNE,
2825 GEORGE T. HAY,
WARD D. WILLIAMS,
FRANCIS A. WILSON,
A. W. SMITH.

Plaintiff's Exhibit 136.

New York City, May 25, 1905.

Chapman vs. Frazer & Geyer Company.
Chapman Estate vs. Frazer & Geyer Company and Waterman Co.
2826 Frazer & Geyer Company vs. Waterman & Co.
Chapman vs. Frazer.

William G. Frazer, Esq.,
Hobart W. Geyer, Esq., and
Arthur A. Waterman.

Gentlemen:

Since the beginning of the above actions, Messrs. Frazer and Geyer have signed the consents to reorganization, and much more than two-thirds of the stockholders have agreed to the plan. The delay in signing these consents led to the beginning of the above suits, and a determination to pursue radical methods and abandon the reorganization.

Plaintiff's Exhibit 136 2827

If it should still seem advisable to continue the reorganization scheme, it will be only upon the following conditions.

1. Mr. Frazer and Mr. Geyer are to assign all their right, title and interest in and to the firm of A. A. Waterman & Co., to the Messrs. Chapman, who with Mr. Waterman will form a new firm of A. A. Waterman & Co.

2. Mr. Frazer and Mr. Geyer to resign all connections with the Frazer & Geyer Company and the new company to be formed, both as employees and officers.

3. The Messrs. Chapman are to loan Mr. Frazer the assessments on the stock now held by them as collateral, and the 2828
amount so paid shall be added to the notes already held, a new note being given for the increased amount, and stock in the new company, as soon as issued to be substituted for the stock in the old company now held as collateral and Mr. Frazer shall increase the security by adding, as collateral, all his holdings of stock in the new company.

4. If Mr. Frazer should desire the Messrs. Chapman to pay the assessments on the remaining stock held by him (that not now held by them as collateral) they will do so, upon consideration of one-half of such stock being conveyed to them in consideration of such advance.

5. The voting trust shall be dissolved. 2829

6. Mr. Frazer, Mr. Hobart W. Geyer and Mr. Charles T. Geyer to return to the treasury the stock dividend heretofore improperly declared, being one-third of the said stock dividend.

The above conditions being complied with, the above entitled actions will be discontinued, otherwise judgments will be taken.

Yours very truly,

ALEXANDER S. BACON,
Atty.

2830 *Plaintiff's Exhibit 137*

(Endorsement): New York Supreme Court, Hobart W. Geyer and William G. Frazer, plaintiffs, vs. Arthur A. Waterman and Gratz Nathan as Receiver of William G. Frazer, Defendants, Summons & Complaint. Straley & Hasbrouch, Attys. for Plfs., O. & P. O. Address, 257 Bway. N. Y., Filed July 11, 1905.

Plaintiff's Exhibit 137.

2831 SUPREME COURT,

NEW YORK COUNTY.

HOBART W. GEYER and WILLIAM G. FRAZER,
Plaintiffs,

vs.

ARTHUR A. WATERMAN and GRATZ NATHAN
as Receiver, etc.,
Defendants.

City of New York, ss.:

2832 Isaac E. Chapman being duly sworn, says that he is the president of the Frazer & Geyer Company, its largest stockholder and largest creditor. Deponent and his relatives and friends and the corporation of the estate William E. Chapman, Inc., are the owners of a large majority of the stock, and together, are its creditors in the sum of more than $30,000;

The corporation of Frazer & Geyer Company is really the party in interest in this controversy, inasmuch as A. A. Waterman & Co. are indebted to it in the sum of about $57,000, a larger sum than all the assets if sold by a receiver, all other creditors having claims amounting to about $4,500.

Plaintiff's Exhibit 137 2833

From a practical business standpoint, Frazer & Geyer Company and A. A. Waterman & Co. are one. The Frazer & Geyer Company furnished all the capital and manufactured fountain pens, while the firm of A. A. Waterman & Co. were their sales agent.

Before the year 1901, the Frazer & Geyer Company owned and controlled by the plaintiffs herein, were manufacturers of fountain pens. Mr. Frazer represented to deponent, who is the vice-president of the Merritt & Chapman Derrick & Wrecking Company, that the Frazer & Geyer Company were doing a profitable business, making money very fast and that with the addition of extra capital, their profits could be greatly increased. 2834

Relying upon the statements of Mr. Frazer, which deponent now knows to have been largely false, he was induced from time to time, to put up a large amount of capital for the Frazer & Geyer Company and deponent and his relatives and friends are today the owners of a large majority of the stock of the Frazer & Geyer Company, besides loaning it $30,000.

Mr. Frazer was given the management of the Frazer & Geyer Company and of A. A. Waterman & Co. At first this management was given to Mr. Frazer and Mr. Geyer jointly, but Mr. Geyer is a bookkeeper and wholly incompetent, and by an amendment to the articles of incorporation, the management was placed in the hands of Mr. Frazer, Mr. Waterman is too valuable man to be in New York. A very large proportion of the sales came through him and his representatives. It was for this reason that he had nothing to do with the local management. 2835

In order to utilize the name of A. A. Waterman & Co. and to obtain the very valuable services of Mr. A. A. Waterman who has been in the fountain pen business for more than 20 yrs. and is by far the most competent man connected with the business—a firm of A. A. Waterman & Co. was organized consisting of A. A. Waterman, Mr. Frazer and Mr. Geyer. This firm was organized without capital with this exception. Frazer & Geyer took out of the funds of the Frazer & Geyer Company, without consent and in violation of their duty as officers and trustees, the

2836 *Plaintiff's Exhibit 137*

sum of $1,000, which they called a loan and credited it to A. A. Waterman & Co. as capital $500, to each; that is to say: the firm of A. A. Waterman & Co. was practically nominal. Mr. Waterman put in no cash and Geyer and Frazer put in nothing except this forced loan from the Frazer & Geyer Company.

As soon as deponent learned of this loan, he required Geyer and Frazer to pay it back. Deponent personally loaned Mr. Frazer $500 in order to repay this improper loan.

The function of A. A. Waterman & Co. was, in effect, that if a sales agent for the Frazer & Geyer Company, which furnished all the capital, manufactured pens, and turned them over to A.
2837 A. Waterman & Co. for sale. *All profits were to go to Frazer & Geyer Company,* for the benefit of the stockholders who had put up the money. (See contract between A. A. Waterman & Co. and Frazer & Geyer Company.)

Deponent verily believes that from the very beginning of this arrangement, the Frazer & Geyer Company lost money. The books (as kept by Frazer & Geyer) did not show it, but it is known that those books were not properly kept, and at or about January, 1901, a stock dividend was declared, which was properly declared according to the books of the company, but deponent has since found—and Mr. Frazer has openly admitted—that the books of the Company were not correct; that the stock dividend was not properly declared and deponent turned back his stock into the treasury and demanded that Mr. Frazer and Mr.
2838 Geyer do the same. Mr. Frazer agreed to do so but did not. On one occasion a very large deficit was covered up by transferring it to "good will."

The whole administration of Mr. Frazer is subject to the acknowledged fact of incompetency and to the admitted fact of irregularity and improprieties.

Things kept going from bad to worse. Mr. Frazer continually saying that they merely needed more capital on account of the increasing business, claiming that they were making money all the time, but that the increased business required additional capital. As this could not be had from the stockholders, deponent, from time to time advanced to the Frazer & Geyer Com-

Plaintiff's Exhibit 137 2839

pany $20,000 in cash, upon representations as to the condition of the company that deponent now knows to have been false. The Estate Wm. E. Chapman, Inc., of which deponent is vice-president, loaned to the Frazer & Geyer Company $10,000 on a note with the endorsement of A. A. Waterman & Co.

The firm of A. A. Waterman & Co. is insolvent. The liabilities include about $57,000 due to the Frazer & Geyer Company, and about $4500 due to outside creditors exclusive of $10,000 due on an endorsement of a note of the Frazer & Geyer Company. The nominal assets about equal the liabilities; the actual assets are much less.

Mr. Frazer was the manager of the Frazer & Geyer Company, and of A. A. Waterman & Co., and he was responsible for present conditions. He received a salary from Frazer & Geyer Company of $50 per week. He took nothing from Waterman & Co. Mr. Geyer acted as cashier and received 65 cents per hour. His wages would not exceed, on the average, fifteen to twenty dollars per week. He is engaged in other business. 2840

Deponent and his relatives having advanced such large sums of money without adequate security and the owners of the majority of the capital stock and the principal creditors having finally found that such management was utterly incompetent, deponent and his relatives refused to advance any more money and a reorganization became imperative, as the company could not go on without more cash.

A meeting of the stockholders of the Frazer & Geyer Company was then called. At this meeting the affairs of the Company were discussed very bluntly, and the stockholders were asked to come into a reorganization company wherein each should pay in $15 per share. The scheme amounted to an assessment of that sum. Deponent offered to pay the assessment of certain minority stockholders provided each would give up to him 1/2 of their stock for such advance. In view of the financial condition of the company this was admitted to be a liberal offer. 2841

At this meeting the management of Mr. Frazer was criticised in very plain language and a large proportion of the stockholders agreed to the reorganization scheme, upon the express condi-

2842 *Plaintiff's Exhibit 137*

tion that the management should be taken from the hands of Mr. Frazer and put into the hands of deponent. An extract from the printed report of the reorganization committee is hereto annexed marked Exhibit 4.

At this meeting of stockholders and at a subsequent meeting of the committee on reorganization, Mr. Geyer and Mr. Frazer personally and through their personal attorney, Mr. Straley expressed their approval of the reorganization scheme and the form of consent and agreement that was then adopted.

Mr. Frazer owns about 80 shares only of the Frazer & Geyer Company, of which 29 shares are hypothecated with deponent or his relatives for money loaned, and as both Mr. Geyer and Mr.
2843 Frazer have stated that they were unable to pay the assessment on their stock, deponent personally, before the beginning of litigation, agreed to pay such assessment.

Notwithstanding the fact that Mr. Geyer and Mr. Frazer had promised to sign the consent for the reorganization (2/3 of stock being necessary) they neglected so to do and kept putting it off on one pretext or another. Finally deponent and his relatives caused the following suits to be begun for the purposes of aiding in the reorganization; (1) Isaac E. Chapman vs. Frazer & Geyer Company, $20,000 note, (2) Estate William E. Chapman, Inc. vs. Frazer & Geyer Company and A. A. Waterman & Co., $10,000 note; (3) Frazer & Geyer Company vs. A. A. Waterman & Co., $57,766.78, (4) Isaac E. Chapman vs. William
2844 G. Frazer, notes $1580.

After these suits were begun Mr. Frazer and Mr. Geyer signed the consents.

In the action of Chapman vs. Frazer (individually) judgment was entered by default, execution issued; returned unsatisfied, and the defendant Gratz Nathan, Esq., made Receiver in Supplementary Proceedings.

Deponent is advised by his attorney, Colonel Alexander S. Bacon, that this fact of receivership and the vesting of Mr. Frazer's title in another *ipso facto*, terminated the partnership of A. A. Waterman & Co., and it immediately went into liquidation, *i. e.*, the firm *is* in liquidation.

Plaintiff's Exhibit 137

Under the terms of copartnership, Mr. Frazer was the manager of the firm. He being disqualified from acting, Mr. Waterman took possession of the assets of the firm for purposes of liquidation jointly with Mr. Geyer, being very careful in every instance to do nothing that would interfere with Mr. Geyer's joint control in liquidation. 2845

Mr. Frazer having maintained upon the advice of his attorney, Mr. Straley, that the firm could not be dissolved except by an order of the court, Mr. Waterman rented a box for the reception of the mail, and offered one key thereof to Mr. Geyer, that they might have joint control. However, the mail has not been delivered at said box, but has in every instance been delivered at 22 Thames Street, the headquarters of the firm, where Mr. Geyer seldom comes. 2846

It was soon discovered that one of the checks of the A. A. Waterman & Co. check books was missing, and Mr. Geyer admitted that he knew that it was missing, and that it was to be used by Mr. Frazer to deliver to Straley & Hasbrouch, their personal attorneys, and thereafter said check turned up at the Oriental Bank filled in by Mr. Frazer and signed in the name of A. A. Waterman & Co., to the order of Straley & Hasbrouch. This was an attempt on the part of Mr. Frazer—after the receivership—to appropriate the funds of the firm to pay his own personal attorneys, Straley & Hasbrouch, who never have been the attorneys for A. A. Waterman & Co., or for the Frazer & Geyer Company, but represent Mr. Frazer and Mr. Geyer only in a personal capacity. Deponent is advised that this was a violation of the injunction contained in the order in supplementary proceedings. 2847

On learning of Mr. Frazer's attempt to misappropriate the funds of A. A. Waterman & Co. deponent caused a notice to be given to the Bank, a copy of which is here annexed marked Exhibit 5 and gave the Bank a bond signed by deponent and Mr. Waterman, to save the bank harmless from all loss upon refusing to pay the said check. A copy of this bond is hereto annexed marked Exhibit 6. These are referred to to show how carefully Mr. Waterman preserved Mr. Geyer's joint right to liquidate the firm.

2848 *Plaintiff's Exhibit 137*

Acting strictly under the advice of counsel, deponent and Mr. Waterman have been very careful in acting for said firm in liquidation to do nothing exclusive of Mr. Geyer—to keep a strict account of every dollar received and expended and to use all possible haste to fill all outstanding orders and liquidate the firm as of June 8, 1905.

Under the execution in the said action of Chapman vs. Frazer & Geyer Company, on June 16, 1905, all the property of the Frazer & Geyer Company was sold at auction and bid in by Mr. T. T. Quackenbusch, who holds the same for the benefit of the stockholders of the Frazer & Geyer Company and will transfer the same to a new company for the purposes of said reor-
2849 ganization.

Mr. Frazer is insolvent. Mr. Geyer is a person of no means is not a practical pen man, but is a bookkeeper and accountant only. The Frazer & Geyer Company is diverted of all its assets of every name and nature whatsoever; the firm of A. A. Waterman & Co. is insolvent. It owes far more than its assets.

Should a receiver be appointed for that firm, all creditors would have to be served alike, and the Frazer & Geyer Company would get its payment *pro rata*. In the event of the firm being liquidated without expense by Mr. Waterman or Mr. Waterman and Mr. Geyer, or by deponent, it is the desire of deponent and his relatives and friends to pay all creditors both of the Frazer and Geyer Company and A. A. Waterman & Co.,
2850 in full, irrespective of any obligations between Frazer & Geyer Company and A. A. Waterman & Co. Every act taken by deponent and Mr. Waterman has been in absolutely good faith with no other object than to transfer all of the assets of the corporation of Frazer & Geyer Company to the new corporation, the Modern Pen Company, for the benefit of the reorganization scheme, wherein every stockholder of the Frazer & Geyer Company will be treated exactly alike.

If, however, the court forces a legal winding up of the affairs of A. A. Waterman & Co., with the expenses of a receiver the Frazer & Geyer Company will necessarily come in for their *pro*

 2851

rata share of all assets, and the merchandise creditors will be paid in part only.

Deponent therefore asks that the application for a receiver be denied, or if the Court thinks that it is absolutely necessary that such receiver should be appointed that Mr. Waterman or deponent be appointed liquidator to serve without charge.

ISAAC E. CHAPMAN.

Sworn to before me this
20th day of June, 1905.
V. M. Turner,
Notary Public,
New York Co.

2852

Plaintiff's Exhibit 138.

SUPREME COURT,

NEW YORK COUNTY.

WILLIAM G. FRAZER and HOBART W. GEYER,
Plaintiffs,

against

2853

ARTHUR A. WATERMAN and GRATZ NATHAN
as Receiver in Supplementary Proceedings
of WILLIAM G. FRAZER,
Defendants.

State of New York,
City and County of New York, } ss.:

Alexander D. Henderson, being duly sworn, says: That by an order in this action, dated on the 10th day of July, 1905, and filed and entered in the office of the Clerk of the County of New

2854 *Plaintiff's Exhibit 138*

York on July 11, 1905, he was appointed receiver, *pendente lite*, of the copartnership property, assets and effects of the firm of A. A. Waterman & Co., which firm theretofore consisted of the plaintiffs in this action, and the defendant Arthur A. Waterman, upon his executing and filing a bond in the usual form prescribed by law, in the sum of five thousand dollars. A copy of said order is hereto annexed, marked "A" and made a part hereof.

That on the 14th day of July, 1905, deponent furnished a bond to the People of the State of New York, in the said sum of five thousand dollars, with the American Surety Company of New York as surety thereon, conditioned for the performance of his duties as such receiver.

2855 That by the terms of the order appointing deponent such receiver, the plaintiffs and defendants herein were ordered, under the direction of Henry Kroft, Esq., who was appointed Referee for that purpose, to turn over to said receiver all of the property and assets of said copartnership, as will more fully appear by reference to said order. That as your deponent is informed and believes copies of the said order were duly served upon the different parties, through their respective attorneys; but no property or assets of any kind of said firm has been turned over to or received by deponent, although the same have been duly demanded. That such receivership was made permanent and the bond continued. That, as your deponent is informed and verily believes, there are serious doubts as to the

2856 existence of any property or assets of said copartnership that can be realized on by the receiver; that when such demand was made it was denied that there were any assets or property; that its affairs have been and are involved in litigations, in one of which a judgment adverse to the interests of said copartnership has been obtained in an amount of upwards of $10,000. That your deponent is advised by his attorneys by reason of the facts above set forth an action for the purpose of reducing such property or assets if any to the possession of the receiver is not warranted; that deponent has not in his possession and does not know of the existence of any funds available for such purpose. That he has already suffered loss through payment of the premium on his bond.

Plaintiff's Exhibit 138

2857

That an order to show cause is asked by reason of the fact that a further annual premium on said bond will become due and payable on July 14, 1908, unless said bond be sooner cancelled and discharged.

That no other application has been made for the order now sought.

WHEREFORE, your deponent prays that an order may be made herein relieving and discharging him as such receiver and cancelling and discharging his said bond; without prejudice to the rights of any of the parties interested to make application for the appointment of a new receiver if they shall be so advised, and for such other and further relief in the premises as to the Court seems just.

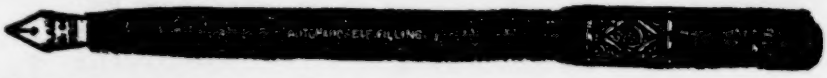
ALEXANDER D. HENDERSON.

Sworn to before me this
8th day of July, 1908.
Bronson P. Reynolds,
Notary Public, Kings Co., No. 1860.
Certificate filed N. Y. Co. No. 588.
Filed July 15, 1908.

2860 **Plaintiff's Exhibit 139.**

Advertisement of Aloe, St. Louis, Mo. of A. A. Waterman & Co. pens.

$4, $3, $2, Laughlin Fountain Pens in Gold, Silver, Aluminum, all go at.. $1.00



2861 **Waterman's Fountain Pens, $1.50**

The celebrated Waterman's Fountain Pen.— with 14-karat solid gold point— Special for this Christmas Sale at.... $1.50

Others $2.50, $5.00 and $10.00.

Plaintiff's Exhibit 140.

2862 **Waterman "Modern,,**

Fountain-Pen della Mondiale **A. A. WATERMAN Co.** di New-York.
LA MIGLIOR PENNA A SERBATOIO **MODERNA** RIEMPIMENTO AUTOMATICO, GARANTITA.
Trovasi nelle migliori Librerie-Cartolerie. Chiedere Cataloghi gratis.
Agente Generale per l'Italia e tutt'Europa: Ditta G. CABRINI - VERONA

Plaintiff's Exhibit 141. 2863

Special This Week

—AT—

LAZARUS JEWELRY STORE

513 Cherry Street

Reorganization Sale 2864

Waterman Fountain Pen

Former Price $2.50

NOW ONLY $1.25 2865

Pen is Solid Gold and Fully Guaranteed

2866 **Plaintiff's Exhibit 6.**

(Post Mark) Ottumwa, Iowa, 1910.

(From)
W. L. Sargent,
Ottumwa, Iowa.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

2867 (Post Mark) Brooklyn, N. Y., 1910.

The Waterman Pen Co.,
Broadway & Cortlandt St.,
New York City.

(Post Mark) Yonkers, N. Y., 1907.

(From)
Shrive,
Yonkers, N. Y.

Waterman Pen Co.,
2868 173 Broadway,
New York City.

(Post Mark) New York, N. Y., 1910.

(From)
161 West 61st St.,
New York.

The Waterman's Pen Co.,
173 Broadway,
N. Y. C.

Plaintiff's Exhibit 6 2869

(Post Mark) El Dorado, Kansas, 1910.

(From)
J. W. Kirkpatrick,
El Dorado, Kansas.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) New York, N. Y., 1910. 2870

Waterman Pen Co.,
173 Broadway,
New York.

(Post Mark) Troy, N. Y., 1910.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

2871

(Post Mark) New York, N. Y., 1910.

Waterman Pen Co.,
173 B'way.,
Manhattan, N. Y.

2872 *Plaintiff's Exhibit 6*

(Post Mark) Manchester, Va., 1910.

(From)
Washington & Earle,
Manchester, Va.

Waterman Pen Co.,
173 Broadway,
New York City.

2873 (Post Mark) Baltimore, Md., 1907.

Waterman Pen Co.,
173 Broadway,
New York.

(Post Mark) New York, N. Y., 1907.

Waterman Pen Co.,
173 Broadway,
City.

2874

(Post Mark) Worcester, Mass., 1908.

(From)
Wm. Pathie,
Worcester, Mass.

Waterman Pen Co.,
155-157 Broadway,
New York, N. Y.

Plaintiff's Exhibit 6

2875

(Post Mark) Richmond, Va., 1907.

(From)
M. Cohen Son & Co.,
Richmond, Va.

The Waterman Pen Co.,
173 Broadway,
New York.

(Post Mark) New Orleans, La., 1907.

2876

(From)
Hart Loan & Pledge Co., Ltd.,
New Orleans, La.

Waterman Pen Co.,
Broadway & Courtlandt St.,
New York City.

(Post Mark) New York, N. Y., 1907.

(From)
Peoples Surety Company,
78 William Street,
New York, N. Y.

2877

Waterman Pen Co.,
175 Broadway,
N. Y. City.

2878 *Plaintiff's Exhibit 6*

(Post Mark) Toledo, Ohio, 1907.

(From)
J. J. Freeman & Co.,
307 Summit St.,
Toledo, Ohio.

Waterman Pen Co.,
175 Broadway,
New York, N. Y.

2879

(Post Mark) Tiffin, Ohio, 1907.

(From)
Tiffin, Ohio,
M. K. Shelly.

Waterman Pen Company,
173 Broadway,
New York City.

(Post Mark) New York, N. Y., 1907.

2880 (From)
Geo. J. Worth,
396-398 Broadway,
New York.

Waterman Pen Co.,
B'way & Courtlandt,
City.

Plaintiff's Exhibit 6

2881

(Post Mark) Urbana, Ill., 1907.

(From)
Wm. Sim Drug Co.,
Urbana, Ill.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) New York, N. Y., 1907.

2882

(From)
Department of Public Charities,
Commissioners Office,
Foot of East 26th Street,
New York.

Waterman Pen Co.,
Broadway & Cortlandt St.,
City.

(Post Mark) Pella, Iowa, 1907.

2883

(From)
L. Van Houten,
Pella, Ia.

Waterman Pen Co.,
173 Broadway,
New York City, N. Y.

2884 *Plaintiff's Exhibit 6*

(Post Mark) Carthage, N. Y., 1908.

(From)
Hall & Lobdell,
Carthage, N. Y.

Waterman Pen Co.,
New York,
Corner Broadway & Cortland Sts.

2885 (Post Mark) Roanoke, Va., 1908.

(From)
Hotel Roanoke,
Roanoke, Virginia,
Fred E. Foster.

Waterman Pen Co.,
173 Broadway,
N. Y.

(Post Mark) Joplin, Mo., 1907.

2886 (From)
Ball & Putman,
Joplin, Missouri.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

Plaintiff's Exhibit 6

2887

(Post Mark) Portland, Ore., 1907.

(From)
Woodard, Clarke & Co.,
Portland, Ore.

The Waterman Pen Co.,
173 Broadway,
New York City, N. Y.

(Post Mark) Denver, Colo., 1907.

2888

(From)
The Denver Dry Goods Co.,
Denver, Colo.

The Waterman Pen Co.,
173 Broadway,
New York City.

(Post Mark) Stratford, Conn., 1908.

(From)
E. N. Packard,
Congregational Church,
Stratford, Conn.

2889

Waterman Pen Co.,
173 Broadway,
N. Y.

2890 *Plaintiff's Exhibit 6*

(Post Mark) Denver, Colo., 1907.

(From)
The Denver Dry Goods Co.,
Denver, Colo.

Waterman Pen Co.,
173 Broadway,
New York City.

(Post Mark) Canon City, Colo., 1907.

2891

(From)
G. A. Beghtol & Co.,
Canon City, Colo.

Waterman Pen Co.,
New York City,
New York.
173 Broadway.

(Post Mark) Okla., 1907.

(From)
2892 Manly Office Supply Co.,
Oklahoma City, Okla.

Waterman Pen Co.,
173 Broadway,
New York City.

Plaintiff's Exhibit 6

2893

(Post Mark) Portageville, Mo., 1907.

(From)
C. L. Patterson,
Poplar Bluff, Mo.

The Waterman Pen Co.,
173 Broadway,
New York City, N. Y.

(Post Mark) Fulton, Mississippi, 1907.

2894

(From)
The Hotchkiss-Parsons
Jewelry Company,
Water Valley, Mississippi.

Mess. Waterman Pen Co.,
173 Bway.,
New York, N. Y.

(Post Mark) Washington. D. C., 1910.

(From)
Department of Commerce and Labor,
Bureau of the Census,
Washington.

2895

The Waterman Pen Co.,
173 B'way,
New York, N. Y.

2896 *Plaintiff's Exhibit 6*

(Post Mark) Portland, Ore., 1907.

(From)
Woodard, Clarke & Co.,
Portland, Ore.

Waterman Pen Co.,
173 Broadway,
New York City, N. Y.

(Post Mark) Hoboken, N. J., 1910.

2897

Waterman Pen Co.,
Broadway & John St.,
New York, N. Y.

(Post Mark) Atlantic City, N. J., 1910.

(From)
Apollo,
1507-1/2 Boardwalk,
Atlantic City, N. J.

2898

The Waterman Pen Co.,
173 Broadway,
New York City, N. J.

(Post Mark) Delta, Colo., 1908.

Waterman Pen Co.,
173 Broadway,
New York.

Plaintiff's Exhibit 6

2899

(Post Mark) Saranac Lake, N. Y., 1910.

(From)
Saranac Lake, N. Y.,
in the Adirondacks.

Waterman Pen Co.,
173 Broadway,
New York City.

(Post Mark) Kankakee, Ill., 1907.

2900

(From)
The Kankakee Gazette,
Kankakee, Ill.

Waterman Pen Co.,
176 Broadway,
New York.

(Post Mark) Sumter, S. C., 1908.

(From)
L. L. Grand,
Sumter, S. C.

2901

The Waterman Pen Co.,
#173 Broadway,
New York City.

2902 *Plaintiff's Exhibit 6*

(Post Mark) Urbana, Ill., 1907.

(From)
Wm. Sim Drug Co.,
Urbana, Ill.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

(From)
J. E. Cuff,
2903 Danbury, Conn.

Waterman Pen Co.,
173 Broadway,
N. Y. City.

(Post Mark) Reading, Pa., 1910.

(From)
Eagle Book Store,
No. 542 Penn Street,
Reading, Pa.

2904 Waterman Pen Co.,
135 Broadway, N. Y.

(Post Mark) Wolcott, N. Y., 1907.

(From)
C. F. Van Valkenburg,
Wolcott, N. Y.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

Plaintiff's Exhibit 6

2905

(Post Mark) Provo, Utah, 1907.

(From)
The Brigham Young University,
Provo, Utah.

Waterman Pen Co.,
173 Broadway,
N. Y.

(Post Mark) Dayton, Tenn., 1907.

2906

(From)
Crawford & Robinson,
Dayton, Tennessee.

Waterman Pen Co.,
New York, N. Y.,
173 Broadway.

(Post Mark) Boston, Mass., 1907.

(From)
First Methodist Episcopal Church,
Chelsea, Mass.

2907

Waterman Pen Co.,
173 Broadway,
New York City.

2908 *Plaintiff's Exhibit 6*

(Post Mark) Walla Walla, Wash., 1907.

(From)
Geo. G. Hedger,
Walla Walla, Wash.

Waterman Pen Co.,
New York, N. Y.,
173 Broadway.

2909 (Post Mark) New York, N. Y., 1907.

(From)
The New York Edison Company,
55 Duane Street,
New York, N. Y.

The Waterman Pen Co.,
Broadway and Courtlandt St.,
New York City.

(Post Mark) Indianapolis, Ind., 1907.

2910 (From)
Sentinel Printing Co.,
Indianapolis.

Waterman Pen Co.,
173 Broadway, N. Y.

Plaintiff's Exhibit 6

2911

(Post Mark) Albany, N. Y., 1907.

(From)
Eliassof Bros. & Co.,
100 State St., Albany, N. Y.

Waterman Pen Co.,
157 Broadway,
New York.

(Post Mark) Minneapolis, Minn., 1907.

2912

(From)
Minneapolis Dry Goods Co.,
Minneapolis, Minn.

The Waterman Pen Co.,
155-157 Broadway,
New York, N. Y.

(Post Mark) New York, N. Y., 1907.

(From)
B. Illfelder & Co.,
97 & 99 Bleecker Street,
New York.

2913

Mess. Waterman Pen Co.,
173 Broadway Cor. Cortlandt St.,
New York City.

2914 *Plaintiff's Exhibit 6*

(Post Mark) Athens, Pa., 1907.

(From)
J. H. Dimon,
414 Main St.,
Athens, Pa.

Mess. Waterman Pen Company,
Broadway,
New York, N. Y.

2915 (Post Mark) Yonkers, N. Y., 1907.

Waterman Pen Co.,
B'way & Cortlandt St.,
N. Y. City.

(Post Mark) New York, N. Y., 1907.

(From)
Henry Phillips,
157 Bowery.

Waterman Pen Co.,
173 Broadway,
2916 City.

(Post Mark) New York, N. Y., 1907.

(From)
Barnard College,
Columbia University,
New York.

Waterman Pen Co.,
173 Broadway,
New York City.

Plaintiff's Exhibit 6

2917

(Post Mark) CHI. CED. RAP. & Co.
B. R. P. O. S. R.

(From)
W. F. Hackett,
Rochelle, Ill.

Waterman Pen Co.,
173 Broadway,
New York City.

(Post Mark) Benton, Ill., 1910. 2918

(From)
Benton City Schools,
Roy Wilkins, Superintendent,
Benton, Illinois.

The Waterman Pen Co.,
New York City.

(Post Mark) Albany, N. Y., 1910.

(From)
E. D. L., 2919
State of New York,
Executive Chamber,
Albany.

Waterman Pen Company,
Broadway,
New York City.

2920 *Plaintiff's Exhibit 6*

(Post Mark) Watertown, N. Y., 1910.

(From)
John Sterling,
100 Washington Street,
Watertown, N. Y.

The Waterman Pen Co.,
173 Broadway,
New York.

2921 (Post Mark) Middletown, Conn., 1910.

(From)
The Wesleyan Argus,
Middletown, Conn.

Waterman Co.,
Cortland cor. Broadway,
New York City, N. Y.

(Post Mark) Phoenix, Arizona, 1907.

2922 (From)
The Berry Hill Co.,
Phoenix, Arizona.

Waterman Pen Co.,
#173 Broadway,
N. Y.

Plaintiff's Exhibit 6

(Post Mark) Wampum, Penn'a, 1910.

(From)
D. C. Williams,
Wampum, Penn'a.

The Waterman Pen Co.,
#173 Broadway,
New York City.

(Post Mark) Toledo, Ohio, 1910.

2924

(From)
The Landman and Blevins Co.,
Toledo, Ohio.

Waterman Pen Company,
New York City, N. Y.

(Post Mark) Boston, Mass., 1910.

(From)
Hooper, Lewis & Co.,
107 Federal St., Boston.

Messrs. Waterman Pen Co.,
173 Broadway,
New York.

2925

(Post Mark) New London, Ct., 1907.

(From)
Perry & Stone,
New London, Ct.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

2926 *Plaintiff's Exhibit 6*

(Post Mark) Winchester, Tenn., 1910.

(From)
Norton's Jewelry Store,
Winchester, Tenn.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

2927 (Post Mark) New York, N. Y., 1910.

(From)
Charles L. Bowman & Co.,
225 Fifth Avenue,
New York.

Waterman Pen Company,
Broadway & Courtlandt Sts.,
City.

(Post Mark) New London, Ct., 1907.

2928 (From)
Perry & Stone,
New London, Ct.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

Plaintiff's Exhibit 6

2929

(From)
W. H. Spalter,
Keene, N. H.

Waterman Pen Co.,
#177 Broadway,
New York City.

(Post Mark) Middletown, P., 1910.

(From)
W. Luerneisen,
Middletown, Dauphin Co., Pa.

2930

Waterman Pen Co.,
#173 Broadway,
New York City.

(Post Mark) New York, N. Y., 1910.

(From)
Julius Blumberg,
262 Grand St.,
New York.

Waterman Pen Co.,
173 Broadway,
City.

2931

(Post Mark) Albany, N. Y., 1907.

(From)
W. M. Whitney & Co.,
Albany, N. Y.

Waterman Pen Co.,
175 Broadway,
New York.

2932 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1907.

(From)
Wabash Cabinet Co.,
296 Broadway,
New York.

Waterman Pen Co.,
Broadway & Cortlandt Sts.,
City.

2933

(Post Mark) Danbury, Conn., 1910.

(From)
James E. Cuff,
241 Main Street,
Danbury, Conn.

Waterman Pen Co.,
173 Broadway,
N. Y. City.

(Post Mark) Hawthorne, N. Y., 1910.

2934

Waterman Pen Co.,
Broadway & Courtlandt,
New York City.

(Post Mark) Houghton, Mich.

Waterman Pen Co.,
#173 Broadway,
New York, N. Y.

Plaintiff's Exhibit 6

2935

(Post Mark) New York, N. Y., 1910.

Waterman Pen Co.,
Broadway and Cortlandt St.,
City.

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(Post Mark) New York, N. Y., 1910.

(From)
Corlies, Macy & Co.,
447 Pearl Street,
New York.

2936

Waterman's Pen Co.,
Broadway & Cortlandt St.,
City.
Wholesale Department.

———

(Post Mark) Saranac Lake, N. Y., 1910.

Waterman Pen Co.,
B'way & Cortland St.,
N. Y. City, N. Y.

2937

———

(Post Mark) Boston, Mass., 1907.

Waterman Pens,
170 Broadway,
New York.

2938 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1907.

(From)
American Printers Agency,
62 Liberty Street,
New York.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

2939 (Post Mark) Loveland, Colo., 1907.

(From)
A. L. Ragatz,
Pastor Methodist-Episcopal Church,
518 Lincoln Ave.,
Loveland, Colorado.

The Waterman Pen Co.,
173 Broadway,
New York, N. Y.

2940 (Post Mark) Knoxville, Tenn., 1910

(From)
Sharp's Drug Store,
Knoxville, Tenn.

Waterman Pen Co.,
Broadway,
N. Y.

Plaintiff's Exhibit 6

2941

(Post Mark) Essex, Conn., 1907.

(From)
Box 350,
Essex, Conn.

Mess. Waterman Fountain Pen Co.,
173 Broadway,
New York City.

(Post Mark) New York, N. Y., 1910.

2942

(From)
John Burkhardt Printing Co.,
108 Fulton St.,
New York City.

Waterman Pen Co.,
Cortlandt St. & B'way,
N. Y. City.

(Post Mark) New Orleans, La., 1907.

(From)
Hart Loan & Pledge Co., Ltd.,
New Orleans, La.,
204 Baronne St.

2943

Waterman Pen Co.,
Broadway & Cortlandt Sts.,
New York City.

2944 *Plaintiff's Exhibit 6*

(Post Mark) Lake Hopatcong, N. J., 1907.

(From)
H. O. Anderson,
"The Rocks,"
Nolan's Point.

The Waterman Pen Co.,
Broadway & Courtlandt St.,
New York City.

2945

(Post Mark) New York, N. Y., 1910.

(From)
John M. Murray,
488 6th Avenue, New York.

The Waterman Pen Co.,
N. West Corner of Cortlandt St.,
B'way,
City.

(Post Mark) Easton, Pa., 1907.

2946

(From)
Easton Cordage Company,
Easton, Pa.

The Waterman Pen Co.,
Cortlandt & Broadway,
New York City.

Plaintiff's Exhibit 6

2947

(Post Mark) New Orleans, La., 1907.

(From)
Harts,
204 Baronne St.,
New Orleans, La.

Waterman Pen Co.,
Broadway & Cortlandt Sts.,
New York City.

2948

(Post Mark) New York, N. Y., 1907.

(From)
Murray Hill Hotel,
New York, N. Y.

Waterman Pen Co.,
171 B'way,
N. Y.

(Post Mark) Cleveland, O., 1910.

2949

(From)
Percy Warner.

Waterman Pen Co.,
Broadway,
New York.

2950 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1907.

(From)
A. S. Barnes & Company,
11-15 East 24th Street,
New York.

The Waterman Pen Company,
173 Broadway,
New York City.

2951

(Post Mark) Philadelphia, Pa., 1907.

(From)
A. Pomerantz & Co.,
Phila.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) Charlottsville, Va., 1907.

2952 (From)
University Station,
Charlottesville, Va.

Waterman Pen Co.,
173 Broadway,
New York City.

Plaintiff's Exhibit 6

2953

(Post Mark) New Brunswick, N. J., 1907.

(From)
W. R. Reed,
New Brunswick, N. J.

Waterman Pen Co.,
173 Broadway,
New York City.

(Post Mark) New York, N. Y., 1907.

2954

(From)
American Specialty Co.,
Fifth Avenue Hotel,
New York.

Waterman Pen Co.,
173 Broadway,
City.

(Post Mark) Stamford, N. Y., 1907.

(From)
A. M. Warner,
Stamford, N. Y.

2955

Waterman Pen Co.,
173 Broadway,
New York City.

2956 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1910.

(From)
Brooklyn Council 165.

Waterman Pen Co.,
171 B'way,
New York.

(Post Mark) Wilmington, Del., 1907.

2957 (From)
E. S. R. Butler & Son,
Wilmington, Del.

Waterman Pen Co.,
173 Broadway,
New York City.

(Post Mark) New York, N. Y., 1907.

(From)
Raphael Tuck & Sons Company,
2958 Nos. 122-124 Fifth Avenue,
New York.

The Waterman Pen Co.,
173 B'way,
City.

Plaintiff's Exhibit 6 2959

(Post Mark) Newark, N. J., 1907.

(From)
Joseph Fass,
427 Broad St.,
Newark, N. J.

Waterman Pen Co.,
173 Broadway,
New York City.

(Post Mark) Syracuse, N. Y., 1907. 2960

(From)
Sloan Brothers,
209 East Jefferson Street,
Syracuse, N. Y.

The Waterman Pen Co.,
173 Broadway,
N. Y. City.

(Post Mark) New York, N. Y., 1910.

2961

(From)
Charles L. Bowman & Co.,
225 Fifth Avenue,
New York.

Waterman Pen Company,
Broadway and Cortlandt St.,
City.

2962 *Plaintiff's Exhibit 6*

(Post Mark) Petersburg, Va., 1910.

(From)
T. S. Beckwith & Co.,
Petersburg, Virginia.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

2963 (Post Mark) Baltimore, Md., 1910.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) Columbus, Ohio, 1910.

Waterman Pen Co.,
Broadway,
New York City.

2964

(Post Mark) Plattsmouth, Nebr., 1910.

(From)
B. A. McElwain,
Plattsmouth, Neb.

Waterman Pen Co.,
New York, N. Y.
#173 Broadway,

Plaintiff's Exhibit 6

2965

(Post Mark) Danbury, Conn., 1910.

(From)
The F. L. Wilson Co.,
Danbury Conn.

Waterman Pen Co.,
173 Broadway,
New York.

(Post Mark) Highland Falls, N. Y., 1910.

2966

(From)
Highland Falls, N. Y.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) Salem, Mass., 1910.

(From)
C. M. Duren & Co.,
No. 97 Washington Street,
Salem, Mass.

2967

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

2968 *Plaintiff's Exhibit 6*

(Post Mark) Zanesville, Ohio, 1910.

(From)
Edmiston Book & Stationery Co.,
Zanesville, Ohio.

Waterman Pen Company,
173 Broadway,
New York, N. Y.

2969 (Post Mark) New York, N. Y., 1910.

(From)
George F. Hills Co.,
108-110-112 Cliff Street,
New York.

Waterman Pen Co.,
#173 Broadway.
City.

(Post Mark) New York, N. Y., 1910.

2970 (From)
Riker's Drug Stores,
Brooklyn, N. Y.

Waterman Pen Co.,
171 B'way,
City.

Plaintiff's Exhibit 6

2971

(Post Mark) Albany, N. Y., 1910.

(From)
E. P. Miller,
Division St. near So. Pearl,
Albany, N. Y.

Waterman Pen Co.,
173 Broadway,
New York.

2972

(Post Mark) Liberty, N. Y., 1910.

(From)
Wm. Fahrenholz,
Liberty, N. Y.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) Jersey City, N. J., 1910.

2973

(From)
Kiernan-Hughes Company,
Ninth and Brunswick Streets,
Jersey City.

The Waterman Pen Co.,
173 Broadway,
New York City, N. Y.

2974 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1910.

(From)
Charles L. Bowman & Co.,
225 Fifth Avenue,
New York.

Waterman Pen Co.,
173 Broadway,
City.

2975

(Post Mark) Bridgeport, Conn., 1910.

(From)
M. J. Buechler,
Bridgeport, Conn.

Waterman Pen Co.,
Broadway & Cortland St.,
New York.

(Post Mark) Columbus, Ohio, 1910.

2976 (From)
A. H. Smyth.

Waterman Pen Co.,
Broadway,
New York City.

Plaintiff's Exhibit 6

2977

(Post Mark) Oklahoma, Okla., 1910.

(From)
Manly Office Supply Co.,
Oklahoma City, Okla.

Waterman Pen Company,
173 Broadway,
New York City, N. Y.

———

(Post Mark) Willimantic, Conn., 1910.

2978

(From)
C. R. Utley,
Willimantic, Conn.

Waterman Pen Co.,
177 Broadway,
New York.

———

(Post Mark) Brookline, Mass., 1910.

(From)
T. Fred Lee.

Waterman Pen Co.,
Broadway & Cortlandt St.,
New York City.

2979

———

(Post Mark) Buffalo, N. Y., 1910.

(From)
F. C. Humbert,

Waterman Pen Co.,
Bway. & Cortland St.,
N. Y. City.

2980 *Plaintiff's Exhibit 6*

(Post Mark) Ogdensburg, N. Y., 1910.

(From)
D. A. Kiah, Jr.,
6 Hamilton St.,
Ogdensburg, N. Y.

Waterman Pen Co.,
New York, N. Y.,
173 Broadway.

2981

(Post Mark) Pittsburg, Pa., 1910.

(From)
The Myers & Shinkle Co.,
711 Liberty Street,
Pittsburgh, Pa.

Waterman Pen Company,
Broadway,
New York City.

(Post Mark) Willimantic, Conn., 1910.

2982

(From)
C. R. Utley,
Lock Box 146,
Willimantic, Conn.

Waterman Pen Co.,
173 Broadway,
New York.

Plaintiff's Exhibit 6

2983

(Post Mark) New Orleans, La., 1910.

(From)
Perry & Buckley Company,
628-630 Poydras Street,
New Orleans.

Waterman Pen Co.,
173 Broadway,
New York.

(Post Mark) De Queen, Ark., 1910. 2984

(From)
Model Drug Co.,
De Queen, Ark.

Waterman Pen Co.,
New York, N. Y.,
173 Broadway.

(Post Mark) Calumet, Mich., 1910.

(From) 2985
Wilho Leihas & Co.,
Calumet, Mich.

Waterman's Fountain Pen Co.,
173 Broadway,
New York, N. Y.

2986 *Plaintiff's Exhibit 6*

(Post Mark) University, N. Dak., 1910.

(From)
The Quarterly Journal,
University, N. Dak.

The Waterman Pen Company,
173 Broadway,
New York City.

2987 (Post Mark) New Orleans, La., 1910.

(From)
Perry & Buckley Company,
628-630 Poydras Street,
New Orleans.

Waterman Pen Co.,
173 Broadway,
New York City.

(Post Mark) Plymouth, Mass., 1910.

2988 (From)
A. S. Burbank,
Plymouth, Mass.

The Waterman Pen Co.,
173 Broadway, N. Y.

(Post Mark) New York, N. Y., 1910.

Waterman's Fountain Pen Co.,
Broadway & Cortland St.,
N. Y. City.

Plaintiff's Exhibit 6

2989

(Post Mark) Prentiss, Miss., 1910.

(From)
Rev. F. H. Funderbunk, B. D., Ph. D.,
Baptist Pastor,
Prentiss, Miss.

Waterman's Fountain Pen Co.,
173 Broadway,
New York City, N. Y.

2990

(Post Mark) Buffalo, N. Y., 1910.

(From)
Cahoon-Lyon Drug Co.,
319 Main Street,
Buffalo, N. Y.

Waterman's Fountain Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) Denver, Colo., 1910.

2991

(From)
302 National Safety Vault Building,
Denver, Colo.

Waterman Fountain Pen Co.,
New York, N. Y.,
173 Bdway.

2992 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1910.

(From)
United States Express Company,
23d Street, New York.

Waterman Fountain Pen Co.,
173 B'way,
N. Y. City.

(Post Mark) New York, N. Y., 1910.

2993

Waterman Fountain Pen Co.,
Cortlandt & Bway.,
N. Y. C.

(Post Mark) New York, N. Y., 1910.

(From)
H. F. Drewes,
860 East 156th Street,
Bronx.

Waterman Fountain Pen Co.,
2994 173 Broadway,
City.

(Post Mark) Sault Sainte Marie, Mich., 1907.

(From)
J. P. Haller,
310 & 312 Ashmun Street,
Sault Ste. Marie, Mich.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

Plaintiff's Exhibit 6

2995

(Post Mark) Kansas City, Mo., 1907.

(From)
Frank E. Lott,
120 W. 8th St.,
Kansas City, Mo.

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

2996

(Post Mark) Hartford, Conn., 1907.

(From)
P. O. Box 247,
Hartford, Conn.

Waterman Fountain Pen Co.,
Advertising Manager,
173 Broadway,
New York City.

(Post Mark) Pittsburgh, Pa., 1907.

2997

(From)
Baird Machinery Company,
Pittsburg, Pa.

Waterman's Fountain Pen Company,
New York City, N. Y.,
173 Broadway,

2998 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1907.

(From)
St. Christopher's Home,
New York.

Waterman Fountain Pen Co.,
173 Broadway,
N. Y. City.

(Post Mark) Dunellen, N. J., 1907.

2999 (From)
Ransome Concrete Machinery Co.,
Dunellen, N. J.

Waterman Fountain Pen Co.,
Cortlandt St. & Bway.,
New York City.

(Post Mark) New York, N. Y., 1908.

(From)
Underwood Typewriter Company,
3000 241 Broadway,
New York.

Waterman Fountain Pen Co.,
B'way & Cortlandt St.,
New York City.

(Post Mark) New Market, Va., 1910.

The Waterman's Fountain Pen Co.,
Broadway & Cortlandt St.,
New York City, New York.

Plaintiff's Exhibit 6

3001

(Post Mark) Louisville, Ky., 1910.

(From)
Kentucky Distilleries & Warehouse Co.,
Louisville, Ky.

Waterman's Fountain Pen Co.,
Broadway and Courtland St.,
New York, N. Y.

(Post Mark) Muskegon, Mich., 1908.

(From)
The Shaw-Walker Co.,
Muskegon, Michigan.

3002

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) Ellicottville, N. Y., 1910.

(From)
M. Bartholonew,
Ellicottville, N. Y.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

3003

(Post Mark) Great Barrington, Mass., 1910.

(From)
I. R. Prindle,
Great Barrington, Mass.

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

3004 *Plaintiff's Exhibit 6*

(Post Mark) Erie, Pa., 1910.

(From)
Boston Store,
Erie Dry Goods Co.,
Erie, Pa.

Waterman's Fountain Pen Co.,
173 Broadway,
New York, N. Y.

3005

(Post Mark) Morrisville, N. Y., 1910.

(From)
Madison County Leader,
Morrisville, New York.

Waterman Fountain Pen Company,
173 Broadway,
New York, N. Y.

(Post Mark) Tupper Lake, N. Y., 1910.

3006

Waterman's Fountain Pen Co.,
New York City.
#171 Broadway.

Plaintiff's Exhibit 6

3007

(Post Mark) Fayetteville, Ark., 1910.

(From)
J. B. Martin,
District Deputy, M. W. A.,
Fayetteville, Ark.

Waterman Fountain Pen Co.,
173 Broadway,
N. York City, N. Y.

3008

(Post Mark) Columbia, Mo., 1910.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

(Post Mark) Albion, N. Y., 1910.

(From)
Wm. E. Frank, Secy.,
Albion, N. Y.

Waterman Fountain Pen Co.,
New York.

3009

Broadway near Maiden Lane.

3010 *Plaintiff's Exhibit 6*

(Post Mark) Hastings, Nebr., 1910.

(From)
J. H. Riffe,
Hastings, Nebraska.

Waterman's Fountain Pen Co.,
173 Broadway,
New York, N. Y.

(From)
H. H. Carter & Co.,
3011 5 Ashburton Place, Boston.

Waterman Fountain Pen Co.,
School St.,
City.

(Post Mark) Cleveland, O., 1907.

(From)
The Bowler & Burdict Co.,
Cleveland, O.

3012 Waterman Fountain Pen Co.,
173 Broadway,
New York City.

(From)
G. K. Birge,
Davenport, Wash.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

Plaintiff's Exhibit 6

3013

(Post Mark) Detroit, Mich., 1907.

(From)
Wm. H. Warren,
Fort Street Congregational Church,
Detroit, Mich.

The Waterman Fountain Pen Co.,
157 Broadway,
New York City, N. Y.

(Post Mark) Brooklyn, N. Y., 1907. 3014

(From)
J. H. Holsten & Son,
Cor. Gravesend Ave. and Ave. I,
Brooklyn, N. Y.

Waterman's Fountain Pen Co.,
173 Broadway,
N. Y.

(Post Mark) New Haven, Conn., 1907.

3015

(From)
Edw. Malley,
P. O. Box, 442,
New Haven, Conn.

Waterman's Fountain Pens,
Broadway,
New York City.

3016 *Plaintiff's Exhibit 6*

(Post Mark) Morgantown, W. Va., 1907.

(From)
Acme Department Store,
Morgantown, W. Va.

Waterman Ftn. Pen Co.,
173 Broadway,
New York City.

(Post Mark) Philadelphia, Pa., 1907.

3017

(From)
C. A. Blessing,
Philadelphia, Pa.

Waterman Fountain Pen Co.,
Broadway,
New York, N. Y.

(Post Mark) Springfield, S. Dak.

(From)
Box 243.
3018 State Normal School,
Springfield, S. Dak.

Waterman's Fountain Pen Co.,
New York, N. Y.

(Post Mark) Easton, Pa., 1910.

Waterman Fountain Pen Co.,
Broadway & Cortland St.,
New York City.

Plaintiff's Exhibit 6 3019

(Post Mark) Syracuse, N. Y., 1910.

Waterman Fountain Pen Co.,
173 Broadway,
N. Y. City.

(Post Mark) Wilmot, S. Dak., 1910.

(From)
Wilmot Drug Company,
Wilmot, So. Dak.

3020

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

(Post Mark) Ottawa, Kans., 1910.

(From)
City Restaurant,
F. H. Bullock, Proprietor,
Ottawa, Kansas.

Waterman Fountain Pen Co.,
New York, N. Y.
173 Broadway.

3021

Waterman Fountain Pen Co.,
173 B'way,
New York City.

3022 *Plaintiff's Exhibit 6*

(Post Mark) Steubenville, Ohio, 1910.

(From)
F. E. Miller,
The Young Men's Christian Association,
Steubenville, Ohio.

Watermans Fountain Pen Co.,
173 Broadway,
New York, N. Y.

3023

(Post Mark) Mount Vernon, N. Y., 1910.

(From)
C. S.,
First National Bank of Mount Vernon,
Mount Vernon, N. Y.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3024

(Post Mark) Irvington, N. Y., 1910.

The Waterman F. Pen Co.,
173 Broadway,
N. Y. City.

(Post Mark) Newark, N. J., 1910.

Waterman Fountain Pen Co.,
Broadway Cor. Cortlandt St.,
New York City.

Plaintiff's Exhibit 6

(Post Mark) Lockport, N. Y., 1910.

(From)
Frank A. Crosby, M. D.,
Lockport, N. Y.

Waterman Fountain Pen Co.,
173 Broadway,
N. Y. City.

(Post Mark) Far Rockaway, N. Y., 1910.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

(Post Mark) Brooklyn, N. Y., 1907.

(From)
James Karins,
U. S. S. Hancock,
Navy Yard, N. Y.

The Waterman Fountain Pen Co.,
173 Broadway,
New York City.

(Post Mark) New Haven, Conn., 1907.

(From)
University Smoke Shops Co.,
New Haven, Conn.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3028 *Plaintiff's Exhibit 6*

(Post Mark) Houston, Texas, 1907.

(From)
Heaton & Polk,
Humble, Texas.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

3029 (Post Mark) Pittsburg, Pa., 1907.

(From)
John M. Roberts & Son Company,
441 Market Street,
Pittsburg, Pa.

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) Washington, D. C., 1910.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3030

(Post Mark) Asbury Park, N. J., 1910.

(From)
Hotel St. George,
Asbury Park, N. J.

The Waterman Fountain Pen Co.,
Broadway,
New York City.

Plaintiff's Exhibit 6 3031

(Post Mark) Starkville, Miss., 1907.

(From)
J. J. Gill,
Starkville, Miss.

Waterman Ft. Pen Co.,
New York,
N. Y.
173 Broadway.

(Post Mark) Alliance, Nebr., 1907. 3032

(From)
Madge Harding,
Alliance, Neb.

Waterman Fountain Pen Co.,
Broadway,
New York,
N. Y.

(Post Mark) Brattleboro, Vt., 1910.

Waterman Fountain Pen Co.,
Broadway & Courtland St., 3033
New York,
N. Y.

(Post Mark) Philadelphia, Pa., 1907.

(From)
Geo. B. Evans.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

3034 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1907.

Waterman Fountain Pen Co.,
173 B'way.,
City.

(Post Mark) Lowell, Mass., 1907.

(From)
Millard F. Wood,
104 Merrimack Street,
3035 Lowell, Mass.

Waterman Fount. Pen Co.,
New York City,
N. Y.
#173 Broadway.

(Post Mark) Birmingham, Ala., 1907.

(From)
E. F. Huff,
Armour Packing Co.,
3036 Atlanta, Ga.

W. E. Waterman & Co.,
#173 Broadway,
New York,
N. Y.

Plaintiff's Exhibit 6

3037

(Post Mark) New York, N. Y., 1907.

(From)
Arkell & Douglass,
New York.

Waterman Fountain P. Co.,
173 Bway.,
City.

(Post Mark) New York, N. Y., 1907.

3038

(From)
Charity Organization Society,
1947 Broadway, Room 326,
New York, N. Y.

Mgr. Waterman's Fountain Pen Company,
173 Broadway,
City.

(Post Mark) Baltimore, Md., 1907.

(From)
W. L. Richards,
312 E. 22 St.,
Balto., Md.

3039

The Waterman Fountain Pen Co.,
173 Broadway,
New York City,
New York.

3040 *Plaintiff's Exhibit 6*

(Post Mark) Callicoon, N. Y., 1910.

(From)
Gustav Boehm,
Hoboken, N. J.

The Waterman Fountain Pen Co.,
Cor. Cortland St., and Broadway,
N. Y. City.

(No Post Mark.)

3041

(From)
The Multi-Typewriting Company,
170 Broadway,
New York.

Waterman Fountain Pen Co.,
173 Broadway,
City.

(Post Mark) New York, N. Y., 1907.

3042 (From)
Hotel Longacre,
H. R. Shares.
157-163 W. 47th St., Near Broadway,
New York.

Waterman Fountain Pen Co.,
173 Broadway,
New York,
N. Y.

Plaintiff's Exhibit 6 3043

(Post Mark) Omaha, Neb., 1907.

(From)
The Young Men's Christian Association,
Omaha, Nebraska.

Waterman Fountain Pen Co.,
173 Broadway,
New York,
N. Y.

3044

(Post Mark) Chicago, Ill., 1907.

(From)
The Little Chronicle Company,
Chicago.

Waterman Fountain Pen Co.,
173 Broadway,
New York City, N. Y.

(Post Mark) Kewanee, Ill., 1907.

3045

(From)
Lyman-Lay Co.,
Kewanee, Ill.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3046 *Plaintiff's Exhibit 6*

(Post Mark) Philadelphia, Pa., 1907.

(From)
The Sunday School Board of the Reformed Church,
1308 Arch Street,
Philadelphia, Pa.

The Waterman Fountain Co.,
173 Broadway,
New York, N. Y.

3047

(Post Mark) Tolbert, W. Va., 1907.

(From)
W. P. Helmick,
Tolbert, W. Va.

The Waterman Fountain Pen Co.,
Cortlandt St. & Broadway,
New York City.

(Post Mark) New York, N. Y., 1908.

3048 (From)
John Hiscox,
271 Col. Ave.

Waterman Fountain Pen Co.,
173 B'way.,
N. Y. C.

Waterman Fountain Pen Co.,
173 Broadway.

Plaintiff's Exhibit 6

3049

(Post Mark) Brooklyn, N. Y., 1910.

(From)
Progress Pub. Co.,
Business Office,
1122 Jefferson Ave.,
Brooklyn, N. Y.

Waterman Fountain Pen Co.,
173 B'dway,
New York City.

3050

(Post Mark) Kalamazoo, Mich., 1907.

(From)
Ihling Bros. & Everard,
Kalamazoo, Mich.

Waterman Fountain Pen Co.,
New York City,
N. Y.

(Post Mark) Liberal, Kans., 1910.

3051

(From)
Dr. E. F. Pellette,
Liberal, Kans.

Waterman Fountain Pen Co.,
New York City.

3052 *Plaintiff's Exhibit 6*

(Post Mark) Scranton, Pa., 1910.

(From)
International Textbook Company,
Scranton, Pa., U. S. A.
Geo. A. Sylvester.

Waterman Fountain Pen Co.,
Cortlandt St. & Broadway,
N. Y.

3053

(Post Mark) Philadelphia, Pa., 1910.

The Waterman Fountain Pen Co.,
Broadway,
New York.

(Post Mark) New York, N. Y., 1910.

(From)
Peper Bros.,
417 DeKalb Ave.,
Brooklyn, N. Y.

3054

Waterman Fountain Pen Co.,
173 Broadway,
New York.

Plaintiff's Exhibit 6 3055

(Post Mark) Philadelphia, Pa., 1910.

(From)
J. B. Beans,
Philadelphia, Pa.

The Waterman Fountain Pen Co.,
Broadway & Cortland St.,
New York City.

(Post Mark) Washington, D. C.. 1910. 3056

(From)
Gifford Pinchot,
Washington, D. C.

Waterman Fountain Pen Co.,
Cortlandt St. and Broadway,
New York City.

(Post Mark) Detroit, Mich., 1910.

(From)

Albert Schaub, 3057
Cor. Gratiot & Brush St.,
Detroit, Mich.

Messrs Waterman Fountain Pen Co.,
Broadway,
New York,
N. Y.

3058 *Plaintiff's Exhibit 6*

(Post Mark) Spring'd, Mass., 1910.

(From)
Powers Paper Co.,
Springfield, Mass.

Waterman Fountain Pen Co.,
Cortlandt St. & Broadway,
New York City.

3059 (Post Mark) Asbury Park, N. J., 1910.

(From)
Hotel St. George,
204 Second Ave.,
Asbury Park, N. J.

S. E. L. Ballard, Prop.

The Waterman Fountain Pen,
Broadway,
New York.

3060 (Post Mark) South Wallingford, Vt., 1910.

(From)
H. L. Rogers,
South Wallingford, Vt.

Waterman Fountain Pen Co.,
New York, N. Y.

Plaintiff's Exhibit 6 3061

(Post Mark) Utica, N. Y., 1910.

(From)
The School of Railway Signalling,
Utica, N. Y.

The Waterman Fountain Pen Co.,
Broadway and Cortlandt Sts.,
New York, N. Y.

(Post Mark) Paterson, N. J., 1907. 3062

(From)
Bamford Bros.,
Silk Manufacturing Co.,
Main Office:
Paterson, N. J.

The Waterman Fountain Pen Co.,
#173 Broadway,
New York.

(Post Mark) Allentown, Pa., 190[illegible]. 3063

(From)
Fred. F. Kramer,
Pianos, Organs and Musical Goods,
544 Hamilton Street,
Allentown, Pa.

Waterman's Fountain Pen Co.,
#173 Broadway,
New York City.

3064 *Plaintiff's Exhibit 6*

(Post Mark) Englewood, N. J., 1910.

Waterman Fountain Pen Co.,
173 Broadway,
New York City,
N. Y.

(Post Mark) Brooklyn, N. Y., 1910.

(From)
Flatbush Trust Company,
3065 Brooklyn,
New York.

Waterman Fountain Pen Company,
173 Broadway,
New York City.

(Post Mark) Knoxville, Tenn., 1910.

(From)
Sharp's Drug Store,
Gay & Wall,
3066 Knoxville, Tenn.

Waterman Pen Co.,
Broadway,
New York.

Plaintiff's Exhibit 6

3067

(Post Mark) Schenectady, N. Y., 1907.

(From)
General Electric Co.,
Schenectady, N. Y.

Waterman Fountain Pen Co.,
Cor. Cortland St. & Broadway.
New York City.

(Post Mark) Brooklyn, N. Y., 1907.

3068

(From)
St. Timothy's Church,
Howard Ave., near Atlantic Ave.,
Brooklyn, N. Y.

Waterman Fountain Pen Co.,
Cortland & Bway.,
N. Y. City

(Post Mark) Tunnelton, W. Va., 1907.

3069

(From)
A. R. Nine,
Tunnelton, West Va.

Wattermans Fountain Pen Co.,
Broadway,
New York City.

3070 *Plaintiff's Exhibit 6*

(Post Mark) Buffalo, N. Y., 1910.

(From)
A. G. Raynor,
16 Woodlawn,
Buffalo, N. Y.

The Waterman Fountain Pen Co.,
173 Broadway,
New York City,
N. Y.

3071

(Post Mark) New York, N. Y., 1907.

(From)
Technical Literature,
220 Broadway,
New York.

Waterman Fountain Pen Company,
173 Broadway,
New York City.

3072 (Post Mark) Brooklyn, N. Y., 1907.

(From)
Miss A. E. Laverty,
532 Grand St., Brooklyn, N. Y.

The Waterman Fountain Pen,
Cortland Street & Broadway,
New York City.

Plaintiff's Exhibit 6 3073

(Post Mark) Grass Valley, Cal., 1907.

(From)
H. Richard Condy,
Grass Valley, California.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

(Post Mark) Kidders, N. Y., 1907. 3074

(From)
D. H. Day,
Kidders, N. Y.

Waterman Fountain Pen Co.,
Broadway & Cortlandt St.,
New York City.

(Post Mark) Syracuse, N. Y., 1907.

(From)
Sloan Brothers, 3075
209 East Jefferson Street,
Syracuse, N. Y.

The Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3076 *Plaintiff's Exhibit 6*

(Post Mark) Manasquan, N. J., 1910.

(From)
G. V. W. Burroughs,
Main Street,
Manasquan, N. J.

Waterman F. Pen Co.,
173 Broadway,
N. Y. City.

3077

(Post Mark) New York, N. Y., 1910.

(From)
Parsons Trading Company,
20 Vesey Street,
New York, N. Y.

The Waterman Fountain Pen Co.,
Broadway & Cortlandt Street,
New York, N. Y.

(Post Mark) Freeland, Pa., 1907.

3078 (From)
Armour & Co.,
Freeland, Pa.,

Waterman Fountain Pen Co.,
New York City.
Bway. & Cortlandt St.

Plaintiff's Exhibit 6 3079

(Post Mark) St. Louis, Mo., 1907.

(From)
The Student Life,
Washington University,
Saint Louis.

The Waterman Fountain Pen Co.,
Advertising Dept.,
173 Broadway,
N. Y. City.

3080

(Post Mark) Troy, N. Y., 1907.

(From)
Hewitt Bros.,
9 Mansion Block,
Troy, N. Y.

Waterman Fountain Pen Co.,
New York City, N. Y.,
173 Broadway.

(Post Mark) New York, N. Y., 1907. 3081

(From)
Wm. Kleeman & Co.,
New York.

Waterman Fountain Pen Co.,
Cortlandt & Broadway,
City.

3082 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1907.

(From)
A. Epstein,
2049 Third Ave.,
New York.

Waterman Fountain Pen Co.,
173 Broadway,
City.

3083

(Post Mark) Elizabeth, N. J., 1910.

(From)
Ernest G. Gommel,
Elizabeth, New Jersey.

Waterman Fountain Pen Co.,
Broadway & Cortlandt St.,
New York City.

(Post Mark) New York, N. Y., 1907.

3084 (From)
Kraus Bros. & Co.,
24 Broad Street,
New York, N. Y.

The Waterman Fountain Pen Co.,
173 Broadway,
N. Y. C.

Plaintiff's Exhibit 6

(Post Mark) York Village, Me., 1907.

(From)
Mrs. A. C. E. McIntire.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

3085

(Post Mark) Brooklyn, N. Y., 1907.

(From)
Metropolitan Iron Foundry,
Brooklyn, N. Y.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

3086

(Post Mark) Batavia, N. Y., 1907.

(From)
Frank S. Wood,
Batavia, N. Y.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

3087

(Post Mark) New York, N. Y., 1907.

(From)
G. K. Fischer,
100 Broadway, N. Y.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3088 *Plaintiff's Exhibit 6*

(Post Mark) Hackensack, N. J., 1910.

The Waterman Fountain Pen Co.,
New York City.
Broadway.

(Post Mark) Englewood, N. J., 1910.

Waterman Fountain Pen Co.,
Cortland Street & Br'dway,
N. Y.

3089

(Post Mark) Ithaca, N. Y., 1910.

Waterman Fountain Pen Co.,
173 Broadway,
N. Y. City.

(Post Mark) York Village, Me., 1910.

Waterman's Ideal Fountain Pen Co.,
3090 Broadway,
New York.

(Post Mark) Philadelphia, Pa., 1910.

(From)
Dr. J. Y. King,
200 Walnut Place,
Philada., Pa.

Waterman Fountain Pen Co.,
179 Broadway,
New York City.

Plaintiff's Exhibit 6

3091

(Post Mark) Washington, D. C., 1910.

(From)
Dr. Frank P. Vale,
Washington, D. C.

Waterman Pen Co.,
173 Broadway,
New York City.

(Post Mark) Cambridge City, Ind., 1910.

3092

(From)
Chas. J. Marson,
Cambridge City, Ind.

Waterman Pen Co.,
#173 Broadway,
New York, N. Y.

(Post Mark) Belding, Mich., 1910.

(From)
Box 452,
Belding, Mich.

3093

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

3094 *Plaintiff's Exhibit 6*

(Post Mark) Pasadena, Cal., 1910.

(From)
Jarvis & Prinz,
49 East Colorado St.,
Pasadena, Cal.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3095 (Post Mark) Monmouth, Ill., 1910.

(From)
W. P. Schall,
Monmouth, Ill.

Waterman Fountain Pen Co.,
New York, N. Y.
173 Broadway.

(Post Mark) Newark, N. J., 1910.

3096 (From)
Monitor Carpet Cleaning Works,
546-548 Central Ave.,
Newark, N. J.

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

Plaintiff's Exhibit 6 3097

(Post Mark) Perth Amboy, N. J., 1910.

(From)
S. Mahler,
352 State Street,
Perth Amboy, N. J.

Watermans Fountain Pen Co.,
Broadway & Cortlandt St.
New York, N. Y.

(Post Mark) N. Y., 1910. 3098

Waterman's Fountain Pen Co.,
173 Broadway,
New York City.

(Post Mark) Harlem, Mont., 1910.

(From)
E. Atkinson,
Harlem, Mont.

Waterman's Fountain Pen Co.,
New York, N. Y. 3099

(Post Mark) Port Discovery, Wash., 1910.

(From)
Al. Kronquist,
Pt. Discovery, Wash.

Waterman's Fountain Pen Co.,
New York, N. Y.

3100 *Plaintiff's Exhibit 6*

(Post Mark) Cal., 1910.
Waterman Fountain Pen Co.,
Broadway,
New York.

(Post Mark) Charlottesville, Va., 1910.

(From)
Hotel Gleason,
F. D. Cunningham, Proprietor,
3101 Charlottesville, Va.

Waterman Fountain Pen Co.,
#173 B'way,
New York City, N. Y.

(Post Mark) Washington, D. C., 1910.

(From)
R. B. Green,
24-O St. N. W.,
Wash., D. C.

3102 Waterman Pen Co.,
173 Broadway,
New York City,
N. Y.

Plaintiff's Exhibit 6 3103

(Post Mark) Tannersville, N. Y., 1910.

(From)
Chas. Voss,
Tannersville, N. Y.

Waterman's Fountain Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) New York, N. Y., 1910. 3104

Waterman Fountain Pen Co.,
Cortlandt St. & Broadway,
City.

(Post Mark) New Orleans, La., 1910.

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

3105

(Post Mark) New York, N. Y., 1910.

(From)
Bruno Steinel,
429 W. 26th Street,
New York City.

Waterman Pen Co.,
173 Broadway,
N. Y. City.

3106 *Plaintiff's Exhibit 6*

(Post Mark) Woodstock, Md., 1910.

(From)
Woodstock College,
Woodstock, Md.

Waterman Fountain Pen Co.,
Broadway and Cortlandt,
New York City,
N. Y.

3107 (Post Mark) El Paso, Texas, 1910.

(From)
Ellis Bros. Printing Company,
El Paso, Texas.

Waterman's Fountain Pen Co.,
New York, N. Y.
173 Broadway.

(Post Mark) Glen Cove, N. Y., 1910.

3108 (From)
Theo. Jospe,
Glen Cove, L. I.

Waterman's Fountain Pen Co.,
173 Broadway,
New York City.

Plaintiff's Exhibit 6 3109

(Post Mark) Greystone Park, N. J., 1910.

(From)
Warden's Office,
Greystone Park, Morris Co., N. J.

The Waterman Fountain Pen Co.,
173 Broadway,
New York City.

(Post Mark) University, Val., 1910.

3110

(From)
University of Virginia Magazine,
Charlottesville, Va.

Waterman Fountain Pen Co.,
Broadway and Courtlandt St.,
New York City.

(Post Mark) Hillsboro, N. H., 1910.

(From)
C. F. Butler,
Hillsboro, N. H.

3111

Waterman Fountain Pen Co.,
173 Broadway,
New York.

(Post Mark) Zanesville, Ohio, 1910.

The Waterman Fountain Pen Co.,
173 Broadway,
New York City,
New York.

3112 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1910.

Waterman Fountain Pen Co.,
173 Broadway, City.

(Post Mark) Washington, D. C., 1910.

(From)
H. L. Rust,
1400 H Street N. W.,
Washington, D. C.

3113

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

(Post Mark) Jersey City, N. J., 1910.

(From)
West Hoboken Public Schools,
School No. 6,
Lake Street, Near West Street,
West Hoboken, N. J.

3114

Waterman Fountain Pen Co.,
Broadway near Courtland St.,
New York City.

(Post Mark) Washington, D. C., 1910.

(From)
1217 K St.,
Washington, D. C.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

Plaintiff's Exhibit 6 3115

(Post Mark) New York, N. Y., 1910.

Waterman Fountain Pen Co.,
173 Broadway,
N. Y. City.

(Post Mark) Wilmington, Del., 1910.
The Waterman Fountain Pen Co.,
173 Broadway,
New York.

3116

(Post Mark) Milwaukee, Wis., 1910.

(From)
Gimbel Brothers,
Milwaukee.

Waterman Fountain Pen Co.,
173 Broadway St.,
New York, N. Y.

3117

(Post Mark) Bloomington, Ill., 1910.

(From)
C. Porter,
Y. M. C. A. Bldg.,
The Wesleyana Staff,
Bloomington, Ill.

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

3118 *Plaintiff's Exhibit 6*

(Post Mark) Gary, Ind., 1910.

(From)
W. L. Cole Drug Co.,
E. W. Bostwick, R. Ph.,
718 Broadway, Gary, Ind.

Waterman Ft. Pen Co.,
New York, N. Y.
173 Broadway.

3119 (Post Mark) Cheshire, Conn., 1910

(From)
Box 140,
Cheshire, Conn.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

(Post Mark) New York, N. Y., 1910.

3120 (From)
Joseph Rocker,
89 West Houston Street,
New York.

Waterman Fountain Pen Co.,
#173 Broadway,
City.

Plaintiff's Exhibit 6 3121

(Post Mark) Washington, D. C., 1910.

(From)
1217 K St.,
Washington, D. C.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

(Post Mark) Cimarron, N. M., 1910. 3122

(From)
Lail & Wilkins,
Cimarron, New Mexico.

Waterman Fountain Pen Co.,
New York City.

(Post Mark) Toledo, Ohio, 1910.

(From)
N. Hess,
Hotel Seror, Toledo, Ohio. 3123

Waterman Fountain Pen Co.,
Cor. Broadway and Cortland St.,
New York City.

(Post Mark) New York, N. Y., 1910.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3124 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1907.

(From)
Box 232,
1230 Amsterdam Ave., City.

Waterman Fountain Pen Co.,
Corner Broadway & Cortlandt,
New York City.

(Post Mark) Covington, Tenn., 1910.

(From)
3125 J. L. McNeely,
Covington, Tenn.

Waterman Ft. Pen Co.,
173 Broadway,
New York.

(Post Mark) Minneapolis, Minn., 1907.

(From)
Minneapolis Dry Goods Co.,
Minneapolis, Minn.

Waterman Fountain Pen Co.,
3126 173 Broadway,
New York, N. Y.

(Post Mark) Emington, Ill., 1907.

(From)
L. H. Wikoff P. M.,
Emington, Ill.

Waterman Fountain Pens,
Broadway,
New York,
N. Y.

Plaintiff's Exhibit 6 3127

(Post Mark) Culpeper, Va., 1907.

(From)
H. C. Burrows,
Culpeper, Va.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

(Post Mark) Pennington, N. J., 1907. 3128

(From)
A. Bermens,
Pennington Sem.,
Pennington, N. J.

Waterman Fountain Pen Co.,
Cortland St. & B'way,
New York City.

(Post Mark) Colorado Springs, Colo., 1910.

(From) 3129
The El Paso Lumber Co.,
Colorado Springs, Colo.

Watermans Fountain Pen Co.,
173 Broadway,
New York.

3130 *Plaintiff's Exhibit 6*

(Post Mark) Helena, Mont., 1910.

(From)
Union Bank And Trust Co.,
Helena, Mont.,
John W. Dawson.

Waterman Fountain Pen Co.,
Lower Broadway,
New York City.

3131

(Post Mark) Arecibo, P. R., 1910.

The Waterman Fountain Pen Co.,
173 Broadway,
New York,
City.
U. S. A.

(Post Mark) Brooklyn, N. Y., 1907.

(From)
James P. Mayne,
3132 371 Fulton Street,
Brooklyn, N. Y.

Waterman Fountain Pen Co.,
173 Broadway,
New York City,
N. Y.

Plaintiff's Exhibit 6 3133

(Post Mark) Minneapolis, Minn., 1910.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

(Post Mark) Tacoma, Wash., 1910.

(From)
The Stone-Fisher Co.,
Tacoma, Washington.

Waterman Fountain Pen Co., 3134
173 Broadway,
New York, N. Y.

(Post Mark) Tarrytown, N. Y., 1908.

(From)
Hackley School,
Tarrytown, N. Y.

Waterman Fountain Pen Co.,
Broadway,
New York. 3135

(Post Mark) Brooklyn, N. Y., 1910.

Waterman Fountain Pen Co.,
Courtland St.,
New York.

3136 *Plaintiff's Exhibit 6*

(Post Mark) Brooklyn, N. Y., 1907.

(From)
Krauledis & Krewat,
133 Middleton St.,
Brooklyn, N. Y.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3137 (Post Mark) Philadelphia, Pa., 1907.

(From)
Bridgeton Hotel,
Cor. South Laurel and Warren Streets,
Bridgeton, N. J.,
Mrs. C. H. Gosbin, Prop.

Waterman Fountain Pen Co.,
Broadway & Cortland St.,
New York.

3138 (Post Mark) Ashland, Ohio, 1910.

(From)
W. W. Cooper & Co.,
Ashland, Ohio.

Waterman Fountain Pen Co.,
New York, N. Y.,
173 Broadway.

Plaintiff's Exhibit 6 3139

(Post Mark) New York, N. Y., 1907.

(From)
M. Brodsky,
91 E. Broadway,
New York.

Waterman Fountain Pen Co.,
173 B'way.,
City.

(Post Mark) Bethel, Wis., 1907.

(From) 3140
W. H. Thurston,
Bethel, Wis.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

(From)
Karl Bergt,
52 Hudson St.,
Tel. 162 J., Dover, N. J.

(Post Mark) Dover, N. J., 1907.

Waterman Fountain Pen Co., 3141
173 Broadway,
New York City.

(Post Mark) Albany, N. Y., 1910.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3142 *Plaintiff's Exhibit 6*

(Post Mark) Cleveland, Ohio, 1910.

(From)
The Sigler Brothers Co.,
Garfield Bldg.,
Cleveland, Ohio.

Waterman Ft. Pen Co.,
173 Broadway,
New York.

(Post Mark) Baltimore, Md., 1910.

3143 (From)
J. C. M. Lucas Co.,
Baltimore, Md.

Waterman Fountain Pen Company,
#173 Broadway,
New York, N. Y.

(Post Mark) Peekskill, N. Y., 1907.

Waterman Fountain Pen Co.,
#173 Broadway,
New York.

3144

(Post Mark) New York, 1907.

(From)
National Surety Company,
115 Broadway,
New York, N. Y.

Waterman Fountain Pen,
173 Broadway,
New York, N. Y.

(Post Mark) S. C., 1910.

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

Plaintiff's Exhibit 6 3145

(Post Mark) New York, N. Y., 1907.

(From)
The Commerce Caravel,
155 West 65th St.,
New York.

The Waterman Fountain Pen Co.,
173 Broadway,
City.

(Post Mark) Tampa, Fla., 1907. 3146

(From)
Tampa Stock Farm,
Aug. VanEepoel,
P. O. Box 133,
Tampa, Florida.

The Waterman Fountain Pen Co.,
175 Broadway,
New York City.

(Post Mark) Dunbar, Pa., 1910. 3147

(From)
David C. Eason,
Dunbar, Pa.

Waterman Fountain Pen Co.,
Broadway,
New York City.

3148 *Plaintiff's Exhibit 6*

(Post Mark) Reading, Pa., 1910.

(From)
O. M. Weand,
Reading, Pa.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

3149 (Post Mark) Knoxville, Atlanta, R. P. O., 1910.

Waterman Fountain Pen Co.,
Broadway,
New York City.

(Post Mark) Rosedale, La., 1910.

(From)
Rosedale, Iberville Parish, La.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3150

(Post Mark) Jersey City, N. J., 1910.

(From)
Memphis Special.

Waterman Fountain Pen Co.,
New York,
N. Y.

Plaintiff's Exhibit 6 3151

(Post Mark) Latta, S. C., 1910.

(From)
Atlanta Coast Line Railroad Company,
Latta, S. C., Station.

Messers. Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) Charleston, W. Va., 1910. 3152

(From)
W. S. May,
Charleston, W. Va.,
Box 754.

Waterman Fountain Pen Co.,
#173 Broadway,
New York City,
New York.

(Post Mark) Hackensack, N. J., 1910. 3153

(From)
John B. Zabriskie,
Lawyers' Building,
Hackensack, N. J.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3154 *Plaintiff's Exhibit 6*

(Post Mark) Albert Lea, Minn., 1907.

(From)
Henry J. Harm,
211 S. Broadway,
Albert Lea, Minn.

Waterman Fountain Pen Co.,
New York City,
#173 Broadway.

3155 (Post Mark) College View, Nebr., 1907.

(From)
College Book Store,
College View, Nebr.

Waterman Fountain P. Co.,
173 Broadway,
New York, N. Y.

(Post Mark) New York, N. Y., 1910.

3156 (From)
Tony Saponara,
321 West Broadway,
New York.

The Waterman Fountain Pen Co.,
Courtland St., Cor. Bway.,
City.

Plaintiff's Exhibit 6 3157

(Post Mark) St. Louis, Mo., 1910.

(From)
801 Cass Ave.,
St. Louis, Mo.

Waterman Fountain Pen Co.,
#173 Broadway,
New York.

(Post Mark) Raquette Lake, N. Y., 1907. 3158

(From)
A. Carrington,
C/o Rev. Brown Serman,
St. Huberts Isle.

Waterman Fountain Pen Co.,
Broadway,
New York.

(Post Mark) Butte, Mont., 1907.

(From) 3159
B. K. Walton.

Waterman Fountain Pen Co.,
New York City,
N. Y.,
Bd'w. & Maiden Lane.

3160 *Plaintiff's Exhibit 6*

(Post Mark) Worchester, Mass., 1908.

(From)
William Pathie,
Worchester, Mass.

Waterman Fountain Pen Co.,
Broadway,
New York,
N. Y.

3161 (Post Mark) Pittsburg, Pa., 1907.

(From)
W. W. Warrick,
6109 Penn Ave., Pittsburg, Pa.

Waterman Pen Co.,
Broadway,
New York, N. Y.

(Post Mark) Danielson, Conn., 1910.

3162 (From)
M. J. Schoonman,
Danielson, Conn.

Waterman Fountain Pen Co.,
173 Broadway,
N. York City.

Plaintiff's Exhibit 6 3163

(Post Mark) Wilmington, N. C., 1910.

(From)
B. C. Moore.

Waterman Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) New York, N. Y., 1910.

3164

(From)
Success Magazine,
Success Magazine Building,
29-31 East 22d Street,
New York.

Waterman Fountain Pen Company,
173 Broadway,
New York City.

(Post Mark) Bradford, Pa., 1910.

3165

(From)
A. M. Boardman,
Secretary Guard No. 14,
Bradford, Pa.

Waterman Fountain Pen,
173 Broadway,
New York.

3166 *Plaintiff's Exhibit 6*

(Post Mark) Jamica, N. Y., 1910.
Waterman Co.,
173 Broadway,
N. Y. City.

(Post Mark) New York, N. Y., 1910.

Waterman Fountain Pen,
173 B'way.,
Man.

3167 Manager.

(Post Mark) Waltham, Mass., 1907.

(From)
Waltham Mfg. Co.,
Waltham, Mass.

The Waterman Co.,
173 Broadway,
New York, N. Y.

3168

(Post Mark) Newark, N. J., 1907.

(From)
Miss M. A. Titus.

Waterman Co.,
173 Broadway,
N. Y. City.

Plaintiff's Exhibit 6 3169

(Post Mark) Tarrytown, N. Y., 1907.

(From)
M. Kate Smith,
Tarrytown, N. Y.,
116 Grove St.

The Waterman Co.,
173 Broadway,
N. Y.

3170

(Post Mark) New York, N. Y., 1907.

(From)
National Bank of Commerce in N. Y.,
New York, N. Y.

Waterman Co.,
173 B'way.,
New York City.

(Post Mark) Merrill, N. Y., 1910.

3171

(From)
Henry J. Conant,
22 Norman Road,
Upper Montclair, N. J.

Waterman Fountain Pen Co.,
Broadway & Cortlandt Street,
New York, N. Y.

3172 *Plaintiff's Exhibit 6*

(From)
M. Roth,
Met. Bldg.,
Orange, N. J.

Waterman & Co.,
173 Broadway,
New York City.

(Post Mark) Minneapolis, Minn., 1910.

3173 (From)
Henry Y. Cohen,
3410 So. 10 Ave.,
Minneapolis, Minn.

Waterman Fountain Pen Co.,
Broadway,
New York City.

(Post Mark) Brooklyn, N. Y., 1910.

(From)
3174 J. P. Duffy,
51st St. and Second Ave.,
Brooklyn.

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

Plaintiff's Exhibit 6 3175

(Post Mark) Medfield, Mass., 1907.

(From)
Grace L. Diggen,
Clark's Camp,
Medfield, Mass.

The Waterman Fountain Pen Co.,
School Street,
Boston, Mass.

3176

(Post Mark) Allegheny, Pa., 1910.

(From)
Charles Fehrenbach,
Corner Ohio and Chestnut Streets,
Allegheny, Pa.
Pittsburg, Pa.

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

3177

(Post Mark) Pennington, N. J., 1910.

(From)
W. J. Frye,
Pennington, N. J.

Waterman Fountain Pen Co.,
Broadway,
New York, N. Y.

3178 *Plaintiff's Exhibit 6*

(Post Mark) Spencer, Ind., 1910.

(From)
Sadler Bros.,
Spencer, Ind.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3179 (Post Mark) Jackson, La., 1910.

(From)

H. M. Todd,
843 Camp,
N. O., La.

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) Denver, Colo., 1910.

3180 (From)
H. G. Mundhenk,
Majestic Building,
Denver, Colo.

The Waterman Fountain Pen Co.,
173 Broadway,
New York.

Plaintiff's Exhibit 6 3181

(Post Mark) New York, N. Y., 1910.

(From)
The Wuensch Paper Box Manufacturing Co.,
317 to 329 East 153d Street,
New York.

Waterman Fountain Pen Co.,
No. 173 B'dway,
N. Y. C.

(Post Mark) Hartford, Conn.. 1910. 3182

(From)
Wm. J. P. Jansen.

Waterman Fountain Pen Co.,
Broadway,
New York.

(Post Mark) Hudson Term. Sta., N. Y., 1910.

(From)
John H. Huxley, 3183
107 John Street,
New York.

Waterman Fountain Pen Co.,
B'way & Cortlandt St.,
City, N. Y.

3184 *Plaintiff's Exhibit 6*

(Post Mark) St. Paul, Minn., 1910.

(From)
Gertrude Williams,
St. Paul, Minnesota.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

3185 (Post Mark) Lebanon, Pa., 1910.

(From)
L. G. Harpel,
Lebanon, Pa.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

(Post Mark) Brooklyn, N. Y., 1910.

(From)
3186 Brooklyn Law School,
Eagle Building,
Brooklyn, N. Y.

Waterman Fountain Pen Co.,
173 Broadway,
New York City.

Plaintiff's Exhibit 6 3187

(Post Mark) Philadelphia, Pa., 1910.

(From)
R. L. Coates, Sec.,
S. W. Cor. Ninth & Chestnut Sts.,
Burd Bldg., Philadelphia.

The Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

3188

(Post Mark) Indianapolis, Ind., 1910.

(From)
G. & J. Tire Co.,
Indianapolis, Ind.,
P. O. Box 126,

Waterman Fountain Pen Company,
Cortland St. & Broadway,
New York, N. Y.

(Post Mark) Indianapolis, Ind., 1910.

3189

(From)
The Cliff Stationery Company,
Indianapolis, Ind.

Waterman Fountain Pen Co.,
New York City, N. Y.

3190 *Plaintiff's Exhibit 6*

(Post Mark) Ashland, Pa., 1910.

(From)
Leonard W. Wetterau,
Frackville, Penna.

The Waterman Fountain Pen Co.,
173 Broadway,
New York City, N. Y.

(Post Mark) New York, N. Y., 1907.

3191

(From)
New York Commercial,
8 Spruce Street, New York.

Waterman Fountain Pen Co.,
Broadway,
N. Y. City.

(Post Mark) Elizabeth, N. J., 1907.

(From)
245 Franklin St.,
3192 Elizabeth, N. J.

Waterman Fountain Pen Co.,
Broadway & Cortlandt St.,
New York City,
N. Y.

Plaintiff's Exhibit 6 3193

(Post Mark) Wilkesbarre, Pa., 1910.

(From)
Diamond City News Agency,
27 N. Franklin Street.

Waterman Fountain Pen Co.,
Cor. Broadway & Courtland Sts.,
New York,
N. Y.

3194

(Post Mark) Hughesville, Pa., 1910.

(From)
Brady Bartlow,
Hughesville, Pa.

Waterman Fountain Pen Co.,
New York,
N. Y.
170 Broadway.

(Post Mark) South Orange, N. J., 1907. 3195

(From)
A. A. Robinson,
Orange, N. J.

Waterman Ft. Pen Co.,
173 Broadway,
New York City.

3196 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1907.

(From)
M. Gropper & Sons,
123 Bowery, New York.

The Waterman Fountain Pen Co.,
173 Broadway,
N. Y. City.

(Post Mark) Booth Bay Harbor, Me., 1907.

3197

(From)
Edgar V. Moffat,
Southport, Me.

Waterman Fountain Pen Co.,
Broadway cor. Cortland St.,
New York, N. Y.

(Post Mark) Paris, Ill., 1910.

(From)
3198 Howard A. Archer,
Paris, Illinois.

Waterman Fountain Pen Company,
New York,
New York.
173 Broadway.

Plaintiff's Exhibit 6 3199

(Post Mark) Chicago, Ill., 1907.

(From)
The Little Chronicle
Pontiac Building, Chicago.

Waterman Fountain Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) New York, N. Y., 1910. 3200

(From)
Wm. B. Riker & Son Co.,
141st St. & Broadway,
New York.

Waterman Fountain Pen Co.,
173 Bdway,
N. Y. City.

(Post Mark) Macon, Ga., 1907.

(From) 3201
J. M. Walsh, s. j.,
Saint Stanislaus' College,
Macon, Ga.

Waterman Fountain Pen Co.,
#173 Broadway,
New York,
N. Y.

3202 *Plaintiff's Exhibit 6*

(Post Mark) Providence, R. I., 1910.

(From)
Livermore & Knight Co.,
Providence, R. I.

The Waterman Pen Co.
Broadway,
New York,
N. Y.

3203

(Post Mark) Sacramento, Cal., 1907.

(From)
Wm. C. Allen,
1308-8th,
Sacto', Cal.

Mess. Waterman Fountain Pen Co.,
173 Broadway,
New York,
N. Y.

3204

(Post Mark) Ukiah, Calif., 1907.

(From)
The Joseph Jewelry Company,
Ukiah, Calif.

Waterman Fountain Pen Co.,
173 Broadway,
New York,
N. Y.

Plaintiff's Exhibit 6

(Post Mark) Scranton, Pa., 1907. 3205

(From)
Technical Supply Company,
Scranton, Pennsylvania.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

(Post Mark) Ash. Abb. & Mil. W., R. P. O., 1907. 3206

(From)
S. H. Abisch,
Armour & Company,
Ashland, Wis.

Waterman Fountain Pen Co.,
New York City,
New York.
173 Broadway.

(Post Mark) Hartford, Conn., 1907. 3207

(From)
F. L. Palmer,
370 Asylum St.,
Hartford, Conn.

Waterman Fount. Pen Co.,
New York, N. Y.
173 Broadway.

3208 *Plaintiff's Exhibit 6*

(Post Mark) Philadelphia, Pa., 1910.

(From)
Albert J. Gannon,
1004 Chestnut Street,
Philadelphia.

Waterman Fountain Pen Co.,
157 Bway,
N. Y. City.

3209 (Post Mark) Philadelphia, Pa., 1908.

(From)
George H. Vanderbeck,
217 Walnut St., Philadelphia.

Waterman Fountain Pen Co.,
New York City,
#173 Broadway.

(Post Mark) Davenport, Wash., 1908.

3210 (From)
Davenport Jewelry Co.,
G. K. Birge, Manager,
Davenport, Washington.

Waterman Fountain Pen Co.,
173 Broadway,
New York.

Plaintiff's Exhibit 6 3211

(Post Mark) Boston, Mass., 1910.

(From)
Bates Torrey,
709 Barristers Hall,
Boston, Mass.

Waterman Fountain Pen Co.,
New York City,
N. Y.
"Waterman Ideal Pen."

3212

(Post Mark) New York, N. Y., 1907.

(From)
Parsons Brothers,
20 Vesey Street,
New York.

Waterman Fountain Pen Co.,
173 Broadway,
City.

(Post Mark) Fitchburg, Mass., 1907. 3213

(From)
German Co-Operative Grocery Co.,
106 Kimball St.,
Fitchburg, Mass.

Waterman Fountain Pen Co.,
#173 Broadway,
New York, N. Y.

3214 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1907.

(From)
Greater New York Bedding Co.,
103 Mott St.,
New York, N. Y.

The Waterman Co.,
173 Bway.

(Post Mark) Philadelphia, Pa., 1907.

3215

(From)
Geo. W. Eranich,
2742 Germantown Ave.,
Philadelphia.

Waterman Company,
173 Broadway,
New York, N. Y.

(Post Mark) New York, N. Y., 1907.

3216 (From)
W. E. Cramer,
Park Avenue, Cor. 73d Street,
New York.

Waterman Co.,
173 Broadway,
City.

Plaintiff's Exhibit 6 3217

(Post Mark) Tarrytown, N. Y., 1907.

(From)
Hackley School,
Tarrytown, N. Y.

Waterman Co.,
173 Broadway,
New York.

(Post Mark) Spokane, Wash., 1907. 3218

(From)
John W. Graham & Co.,
Spokane, Wash.

Waterman Co.,
173 Broadway,
New York City.

(Post Mark) New York, N. Y., 1910.

(From)
Sprague Electric Company, 3219
527 West 34th Street,
New York.

Waterman Co.,
173 B'way,
N. Y. City.

Waterman Co.,
173 Broadway,
New York City.

3220 *Plaintiff's Exhibit 6*

(Post Mark) Yonkers, N. Y., 1907.

Waterman Fountain Pen,
173 Broadway,
New York.

(Post Mark) Brooklyn, N. Y., 1907.

Waterman,
173 Broadway,
New York City.

3221

(Post Mark) New York, N. Y., 1910.

(From)
Parish House,
213 East 115th Street,
New York.

Waterman's,
173 Broadway,
N. Y. City.
Fountain Pen.

3222

(Post Mark) Ithaca, N. Y., 1910.

(From)
1911 Class Book,
Ithaca, N. Y.

Waterman's Fountain Pen,
173 Broadway,
New York City.

Plaintiff's Exhibit 6 3223

(Post Mark) New York, N. Y., 1910.

(From)
Thomas J. Dunn Co.
101 Chambers St., cor. Church St.,
New York.

Waterman Fountain Pen,
Cortlandt St. & W. B'way,
New York.

(Post Mark) Lake Kushaqua, N. Y., 1910. 3224

Waterman & Co.,
Broadway,
New York City.

(Post Mark) Des Moines & K City, R. P. O., 1910.

(From)
Brown Mercantile Co.,
Runnells, Iowa.

Waterman Co.,
173 Broadway, 3225
New York City.

(Post Mark) Youngsville, N. Y., 1910.

(From)
Edward Homer,
Youngsville, Sullivan Co., N. Y.

Waterman & Co.,
Cortlandt St. & Broadway,
New York, N. Y.

3226 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1910.

(From)
Mexico Tramways Co.,
25 Broad St.,
New York.

Waterman & Co.,
Cortland St. & Bway.,
City.

3227 (Post Mark) New York, N. Y., 1910.

Waterman Pens,
173 Broadway,
City.

(Post Mark) Manhassett, N. Y., 1908.

(From)
Mr. Mitchell,
Manhassett, N. Y.

Waterman's,
3228 173 Broadway,
N. Y.

(Post Mark) Baltimore, Md., 1910.

(From)
Kahn's Reliable Drug Store,
Baltimore.

Waterman Pen Co.,
Broadway,
New York, N. Y.

Plaintiff's Exhibit 6 3229

(Post Mark) Binghamton, N. Y., 1910.

The Waterman Co.,
173 Broadway,
N. Y.

(Post Mark) Grand Rapids, Mich., 1910.

(From)
B. S. Sevensma,
345 So. East Street,
Grand Rapids, Mich. 3230

Waterman Co.,
173 Broadway,
N. Y.

(Post Mark) Hoboken, N. J., 1910.

(From)
Gustav Boehm,
Hoboken, N. J.

Waterman's Fountain Pen, 3231
Office
Cortlandt & Broadway,
N. Y. City.

(Post Mark) New York, N. Y., 1910.

Waterman's Co.,
173 Broadway,
City.

Plaintiff's Exhibit 6

3232

(Post Mark) Mount Vernon, Wash., 1907.

(From)
Mount Vernon Drug Co.,
Mount Vernon, Wash.

Waterman & Co.,
New York City,
N. Y.
173 Broadway.

3233

(Post Mark) Molson, Wash., 1907.

(From)
Tompkins & Co.,
Molson, Wash.

Waterman & Co.,
173 Broadway,
New York.

(Post Mark) Valdez, Alaska, 1907.

(From)
3234 Owl Drug Co.,
Valdez, Alaska.

Waterman & Co.,
New York,
N. Y.
173 Bway.

Plaintiff's Exhibit 6 3235

(Post Mark) New York, N. Y., 1907.

(From)
Fred G. Earl,
103-8th Ave.,
City.

Waterman & Co.,
173 Broadway,
City.

3236

(Post Mark) Bridgeport, Conn., 1910.

(From)
The Bridgeport Trust Company,
Bridgeport, Conn.

Waterman Fountain Pen,
173 Broadway,
N. Y.

(Post Mark) New York. 1910.

3237

(From)
Max S. Fersko,
1928 Third Ave.,
New York.

Waterman's Fountain Pen,
173 Broadway,
City.

3238 *Plaintiff's Exhibit 6*

(Post Mark) Sea Girt, N. J., 1907.

(From)
E. L. Spencer,
Sea Girt, N. J.

Waterman & Co.,
Broadway,
New York City.
Mdse.

3239 (Post Mark) Brooklyn, N. Y., 1907.

(From)
Office of
Publicity Committee
of
St. John's Church,
Webster Avenue,
Brooklyn, N. Y.

Waterman & Co.,
73 Broadway,
N— York Cy,
N— York.

3240

(Post Mark) Niagara Falls, N. Y., 1910.

Waterman Fountain Pen,
173 Broadway,
New York City,
New York.

Plaintiff's Exhibit 6

3241

(Post Mark) Tannersville, N. Y., 1907.

(From)
Oscar Langer,
Tannersville, G. C. N. Y.

Waterman & Co.,
Broadway, Corner Cortland St.,
New York City.

(Post Mark) Asbury Park, N. J., 1907.

3242

(From)
Steinbach Company,
Asbury Park,
New Jersey.

Waterman,
173 Broadway,
New York,
N. Y.

(Post Mark) New York, N. Y., 1907.

3243

(From)
S. Rottman,
368-8th Ave.,
New York City.

Watermans,
171-173 Broadway,
New York City.

3244 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1910.

Waterman & Company,
173 Broadway,
City.

(Post Mark) New Rochelle, N. Y., 1910.

Waterman and Co., Fntn. Pens,
173 Broadway,
New York City,
3245 N. Y.

(Post Mark) New York, N. Y., 1907.

(From)
Mark Cross Co.,
210 5th Ave.,
New York, N. Y.

Waterman & Co.,
173 B'way,
City.

3246 (Post Mark) Endicott, N. Y., 1907.

(From)
International Time Recording
Company of New York,
Bundy Square,
Endicott, N. Y.

Waterman & Co.,
173 Broadway,
New York City.

Plaintiff's Exhibit 6 3247

(Post Mark) Washington, D. C., 1910.

Waterman & Co.,
173 Broadway,
New York City,
N. Y.

(Post Mark) New York, N. Y., 1910.

(From)
H. B. Kruger,
1650 Amst., City. 3248

Waterman & Co.,
171 B'way,
City.

(Post Mark) N. Y. & Salamanda, R. P. O., 1910.

(From)
Fulboam Dairy Company,
Office Millsville, Pa.

Waterman Fountain Pen Co.,
B'way & Cortland St., 3249
New York,

(Post Mark) Shaft, Md., 1910.

Waterman & Co. (Ideal Fountain Pen),
175 Broadway,
New York.

3250 *Plaintiff's Exhibit 6*

(Post Mark) Santa Cruz, Cal., 1907.

(From)
Fred R. Howe,
Santa Cruz, Cal.

Waterman Co.,
New York City,
N. Y.
173 Broadway St.

3251 (Post Mark) Brooklyn, N. Y., 1907.

(From)
C. Handman,
334 Sumner Ave.,

The Waterman Co.,
173 Broadway,
New York City.

(Post Mark) New York, N. Y., 1910.

3252 (From)
Underwood Typewriter Company,
241 Broadway,
New York.

Waterman Co.,
171 Broadway,
N. Y. City.
F.

Plaintiff's Exhibit 6 3253

(Post Mark) Providence, R. I., 1907.

(From)
Weybosset Jewelry Co.,
Cor. Weybosset & Mathewson Sts.,
Providence, R. I.

Waterman Pen Co.,
6 School St.,
Boston,
Mass.

3254

(Post Mark) delivered by boy, 1907.

(From)
Thomas Groom & Co.,
105 State St., Boston.

Waterman Pen Co.,
School St.,

Repoint. Thomas Groom & Co.,
D. Hough.

3255

(Post Mark) Lowell, Mass., 1907.

(From)
H. C. Kittredge,
Lowell,
9 Central St.

Waterman Pen Co.,
School St.
Boston,
Mass.

3256 *Plaintiff's Exhibit 6*

(Post Mark) Brockton, Mass., 1907.

(From)
Thayer Bros.
Brockton.

Waterman Pen Co.,
School St.
Boston, Mass.

(Post Mark) Providence, R. I., 1910.

3257

(From)
The Hallett,
Simon McWey, Prop.
Providence, R. I.

Waterman Pen
#173 Broadway
New York.

(Post Mark) Buffalo, N. Y., 1910.

3258 (From)
Rocco N. Dominicis,
128 Ellicott St.
Buffalo, N. Y.

The Watermans Fountain Pen
173 Broadway
New York
N. Y.

Plaintiff's Exhibit 6 3259

(Post Mark) Walden, N. Y., 1910.

(From)
The Walden Knife Co.,
Walden, N. Y.

Waterman & Co.,
173 Broadway,
N. Y. City.

(Post Mark) North Tarrytown, 3260

Waterman Fn'tn. Pens,
173 Broadway,
New York City.

(Post Mark) Brooklyn, N. Y., 1910.

Waterman Fountain Pen,
173 Broadway,
New York,
N. Y.

--- 3261

(Post Mark) Washington, D. C., 1910.

Waterman Fountain Pen,
173 Broadway,
N. Y. City.

3262 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1910.

(From)
David Killoch Co.,
193 Greenwich Street,
New York, N. Y.

Waterman Co.,
173 B'way,
New York City.

3263 (Post Mark) Jacksonville, Fla., 1910.

(From)
The Aragon,
J. A. Newcomb,
Proprietor.

The Waterman Co.,
New York,
N. Y.
#173 Bdwy.

3264 (Post Mark) New York, N. Y., 1910.

Watermans,
173 Broadway,
N. Y. C.

Plaintiff's Exhibit 6 3265

(Post Mark) New Haven Conn., 1910.

(From)
Yale Scientific Monthly,
Byers Memorial Hall,
New Haven, Conn.

Watermans,
173 Broadway,
New York City.

(Post Mark) New York, N. Y., 1910. 3266

(From)
Mutual Milk and Cream Co.,
214-224 East 22nd Street,
New York.

Waterman & Co.,
173 Broadway,
New York City.

(Post Mark) Trenton, N. J., 1910.

3267

(From)
Samuel J. Kelly,
No. 147 E. State Street,
Trenton, N. J.

Waterman Co.,
173 Broadway,
New York.

3268 *Plaintiff's Exhibit 6*

(Post Mark) Scranton, Pa., 1910.

(From)
Thos. F. Leonard Co.,
505 Lackawanna Av.,
Scranton, Pa.

Waterman Co.,
Broadway,
N. Y. City, N. Y.

3269 (Post Mark) Sussex, N. J., 1910.

(From)
Chas. E. Willson,
Sussex, N. J.

Waterman's Ideal Fountain Pen Co.,
Cor. Broadway & Cortlandt St.,
N. Y. City.

(Post Mark) Burlington, Vt., 1910.

Waterman's Ideal Pens,
3270 173 Broadway,
New York City.

(Post Mark) Va., 1910.

Waterman's Ideal Fountain Pen Co.,
$173 Broadway,
New York City, N. Y.

Plaintiff's Exhibit 6 3271

(Post Mark) Paterson, N. J., 1910.

(From)
Quackenbush & Co.,
Paterson, N. J.

Waterman Ideal Co.,
173 Bway.,
N. Y. City.

(Post Mark) New York, N. Y., 1910.

3272

The Waterman Fountain Pen Co.,
173 Bway.,
City.

(Post Mark) Raleigh, N. C., 1910.

(From)

John C. Drewry,
State Agent,
The Mutual Benefit Life Insurance Company,
Raleigh, N. C.

The Waterman Ideal Fountain Pen Co., 3273
Broadway,
New York, N. Y.

(Post Mark) Stillmore, Ga., 1910.

(From)
G. A. Daughtry,
Stillmore, Ga.

Waterman's Ideal Pen Co.
New York City.

Plaintiff's Exhibit 6

3274 (Post Mark) Buffalo, N. Y., 1910.

(From)
Charles L. Bullymore,
73 West Eagle Street,
Buffalo, N. Y.

Waterman Ideal Pen Company,
New York City,
New York.

3275 (Post Mark) Lakeland, Fla., 1910.

(From)
Lake Pharmacy,
Lakeland, Florida.

Waterman Ideal Fountain Pen Co.,
#173 Broadway,
New York City.

(Post Mark) Jamaica, N. Y., 1910.

3276 The Waterman Ideal Fountain Pen Co.
173 Broadway,
New York.

(Post Mark) Burlington, Vt., 1910.

Waterman's Ideal Pen,
173 Broadway,
New York City.

Plaintiff's Exhibit 6 3277

(Post Mark) Brooklyn, N. Y., 1910.

"Waterman Ideal Fountain Pen Co.,"
Broadway cor. Cortlandt St.,
New York.

(Post Mark) Bluffton, Ohio, 1910.

(From)
Bixel Jewelry & Music Co.,
Bluffton, Ohio. 3278

Waterman Ideal Pen Co.,
New York City.

(Post Mark) West Point, Ga., 1910.

(From)
Adams Hardware Co.,
West Point, Ga.

Waterman Ideal Fountain Pen Co.,
New York, N. Y.
#173 Broadway. 3279

(Post Mark) Globe, Ariz., 1910.

(From)
Arizona & Michigan Mining Company,
S. W. Clawson, Gen. Mgr.,
Globe, Arizona.

Waterman's Ideal Pen Co.,
New York, N. Y.

Plaintiff's Exhibit 6

3280 (Post Mark) Mount Vernon, Ohio, 1910.

The Waterman Ideal Fountain Pen Co.
New York City, N. Y.
173 Broadway, N. Y.

(Post Mark) Wilmington, N. C., 1910.

(From)
Harriss,
Wilmington, N. C.

3281 Waterman Ideal Fountain Pen Co.,
173 Broadway,
New York.

(Post Mark) St. Louis, Mo., 1910.

(From)
W. J. Kennedy Stationery Co.,
212 N. 4th St.,
St. Louis.

Waterman's Ideal Fountain Pen Co.,
173 Broadway,
3282 New York, N. Y.

(Post Mark) Cincinnati, O., 1910.

(From)
Queen City Publishing Company,
Number 705 Pine Street,
Cincinnati, O.

Waterman Ideal Pen Co.,
New York, N. Y.

Plaintiff's Exhibit 6 3283

(Post Mark) Portland, Ind., 1910.

(From)
Phil Stachler,
Portland, Indiana.

Waterman Ideal Pen Co.,
New York City,
N. Y.

(Post Mark) New York, N. Y., 1910. 3284

(From)
Sussman's,
Theatre Ticket Office,
253 Broadway, New York.

Waterman Ideal Fountain Pen Co.,
173 Broadway,
City.

(Post Mark) St. Louis, Mo., 1910.

(From) 3285
Berthold & Jennings Lbr. Co.,
St. Louis, Mo.

Watermen's Ideal Fountain Pen Co.,
Broadway & Courtland St.,
New York, N. Y.

3286 *Plaintiff's Exhibit 6*

(Post Mark) Woodbury, N. J., 1910.

(From)
G. G. Green,
Woodbury, N. J.

Waterman Ideal Fountain Pen Co.,
New York City,
173 Broadway.

(Post Mark) Waltham, Mass., 1910.

3287 (From)
T. L. Lancisi,
Waltham, Mass.

Waterman Ideal Pen Co.,
173 Broadway,
New York City.

(Post Mark) Elmira, N. Y., 1910.

(From)
B. H. Norton,
3288 Elmira, N. Y.

Waterman Ideal Pen Co.,
Cortlandt St. & Bway.,
N. Y. City.

(Post Mark) Ann Arbor, Mich., 1910.

(From)
David B. Phillips.

The Waterman Ideal Pen Co.,
New York, N. Y.

Plaintiff's Exhibit 6 3289

(Post Mark) Buffalo, N. Y., 1910.

(From)
R. N. Frame,
Tropical Development Company,
Buffalo, N. Y.

Waterman Ideal Fountain Pen Co.,
173 Broadway,
New York City,
N. Y.

3290

(Post Mark) New York, N. Y., 1907.

(From)
New York Journal.

Ideal Pen Co.,
173 Broadway,
N. Y. City.

(Post Mark) New York, N. Y., 1907.

(From) 3291
Advertising Department,
The Delineator,
The Designer,
New Idea Woman's Magazine,
Butterick Building, N. Y.

Ideal Pen Co.,
173 Broadway,
N. Y. City.

8292 *Plaintiff's Exhibit 6*

(Post Mark) Boston, Mass., 1907.

(From)
American Gutta Percha & Rubber Co.,
186 Devonshire Street,
Boston, Mass.

Ideal Pen Co.,
173 Broadway,
New York, N. Y.

Mgr.
Ideal Pen Co.,
173 Broadway,
3293 City.

(Post Mark) New York, N. Y., 1907.

(From)
Advertising Department,
The Delineator,
The Designer,
New Idea Woman's Magazine,
Butterick Building, N. Y.

Ideal Pen Co.,
3294 173 Bway.,
N. Y. City.

(Post Mark) San Jose, Cal., 1910.

(From)
Geo. D. Abbott,
26 N. Second St., San Jose, Cal.

Waterman's Ideal Pen Co.,
New York, New York.

Plaintiff's Exhibit 6

3295

(Post Mark) Hurleyville, Sull. Co., N. Y., 1910.

(From)
Waldorf Hotel,
B. F. Clark, Prop.,
Hurleyville, Sull. Co., N. Y.

Waterman Ideal Pen Co.,
173 Broadway,
New York.

3296

(Post Mark) Washington, N. J., 1910.

(From)
James H. Johnston,
10 East Washington Ave.,
Washington, N. J.

L. E. Waterman Fountain Pen Co.,
New York, N. Y.
173 Broadway.

(Post Mark) Sterling, Ill., 1910.

3297

(From)
S. P. Giddings & Son,
Sterling, Ill.

The L. E. Waterman Pen Co.,
173 Broadway,
New York, N. Y.

3298 *Plaintiff's Exhibit 6*

(Post Mark) Kansas City, Mo., 1910.

(From)
C. B. Norton Jewelry Co.,
Kansas City, Mo.

L. E. Waterman Pen Co.,
173 Broadway,
New York, N. Y.

(Post Mark) Portland, Ore., 1907.

3299

(From)
A. N. Wright,
293 Morrison St.,
Portland, Oregon.

E. L. Waterman Co.,
173 Broadway,
New York, N. Y.

(Post Mark) Philadelphia, Pa., 1907.

3300 (From)
N. Snellenburg & Company,
Philadelphia.

L. Waterman & Son,
173 B'way,
N. Y. City.

Plaintiff's Exhibit 6 3301

(Post Mark) Salmon Falls, N. H., 1907.

(From)
John Brisard,
Salmon Falls, N. H.

E. L. Waterman & Co.
173 Broadway,
New York, N. Y.

(From) 3302
C. J. Whitinie,
Port Republic, Va.

E. L. Waterman & Co.
173 Broadway,
New York.

(From)

G. S. Kean,
Grand Valley, Pa.

E. L. Waterman & Co. 3303
173 Broadway,
N. Y.

(From)
Thos. E. Cable,
Midland Beach, S. I.

D. F. Waterman,
173 Broadway,
City.
Fountain Pen.

3304 *Plaintiff's Exhibit 6*

(Post Mark) New York, N. Y., 1907.

(From)
Fred F. A. Treuleben,
Successor to
Ferdinand Kreuter,
45 Second Avenue, New York.

E. L. Waterman,
Broadway and Courtland St.,
City.

3305

(Post Mark) Kahlotus, Wash., 1907.

(From)
A. J. McCallum,
Kahlotus, Wash.

E. L. Waterman Co.,
173 Broadway,
N. Y.

(Post Mark) New York, 1907.

3306

(From)
373 High W.,
Newark, N. J.
Emma Mendel.

A. F. Waterman,
173 Broadway,
N. Y. C.

Plaintiff's Exhibit 6

3307

(Post Mark) New York, N. Y., 1907.

(From)
Fordham Stone Renovating Co.,
1123 Broadway,
New York.

E. L. Waterman Co.,
173 Broadway,
N. Y. City.

3308

(Post Mark) Kinderhook, N. Y., 1907.

(From)
A. C. Kilner,
Kinderhook, N. Y.

L. F. Waterman,
173 Broadway.
N. Y. City, N. Y.

(Post Mark) Tescott, Kansas, 1907.

3309

(From)
Baker Bros.,
Tescott, Kansas.

J. E. Watterman Pen Co.,
173 Broadway,
N. Y. City, N. Y.
J. E. Watterman.

3310 *Plaintiff's Exhibit 6*

(Post Mark) Brooklyn, N. Y., 1907.

Messrs. J. E. Waterman Co.,
173 Broadway,
New York.

(Post Mark) Emporia, Va., 1907.

(From)
A. F. Slate & Son,
Emporia, Virginia.

3311

Mr. L. A. Waterman Co.,
New York, N. Y.
173 Broadway.

(Post Mark) Dubuque, Iowa, 1907.

(From)
Harger & Blish,
Dubuque, Iowa.

L. A. Waterman Co.,
New York, N. Y.
3312 173 Broadway.

(Post Mark) Boston, Mass., 1910.

(From)
United Stationery Co.,
Boston, Mass.

L. E. Waterman & Sons,
173 Broadway,
New York City.

Plaintiff's Exhibit 6 3313

(Post Mark) Washington, D. C., 1908.

(From)
The Law Reporter Co.,
M. W. Moore, Manager,
Washington, D. C.

The A. A. Waterman Co.,
173 Broadway,
New York, N. Y.

(Post Mark) Corona, Ala., 1910. 3314

(From)
Corona Coal & Iron Co.,
Corona, Walker Co., Ala.

A. A. Waterman & Company,
Broadway & Cortland Sts.,
New York City.

(Post Mark) Georgetown, S. C., 1910.

Mess. A. A. Waterman & Co., 3315
New York, N. Y.
#173 Broadway.

(Post Mark) New York, N. Y., 1910.

(From)
M. W. Hale,
208 East 19th Street,
Manhattan.

A. A. Waterman Fountain Pen Co.,
173 Broadway,
City.

3316 *Plaintiff's Exhibit 6*

(Post Mark) Scranton, Pa., 1908.

(From)
Reynolds Bros.,
Scranton, Pa.

A. A. Waterman,
#173 Broadway,
N. Y.

(Post Mark) Norfolk, Va., 1908.

3317

(From)
Jacob Bennett,
386 Main St.,
Norfolk, Va.

A. A. Waterman & Co.,
173 Broadway,
New York.

(Post Mark) Kalamazoo, Mich., 1910.

3318 (From)
The Accident Cabinet Co.,
Kalamazoo, Mich.

A. A. Waterman & Co.,
173 B'way,
New York City, N. Y.

Plaintiff's Exhibit 6 3319

(From)
Whitehall Tatum Company,
New York, N. Y.

A. A. Waterman,
173 Broadway,
City.

Waterman's Ideal Fountain Pen Co.,
22 Thames St.,
New York, N. Y. 3320

Opened by A. A. Waterman & Co.

3321

3322 **Memorandum Decision of the Circuit Court on Motion for Preliminary Injunction.**

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Plaintiff,
against
MODERN PEN COMPANY,
Defendant.

3323

Motion for preliminary injunction, argued August 12, 1910.

Mr. Watson, for complainant.
Mr. Bacon, for defendant.

MEMORANDUM.

Since in pleading and argument defendant has asserted that no disputed question of fact exists in this case, any necessity for dwelling upon the history of this litigation disappears.

It is not meant by the foregoing that the parties are in agreement; but their differences arise not from quarrels over what
3324 happened at a given time and place, but over the inferences to be drawn from what confessedly did happen.

No further opinion will therefore be filed than to state the nature of complainant's demands, and my conclusions thereon.

An injunction is asked restraining the Modern Pen Company from

"Directly or indirectly making or causing to be made, selling or causing to be sold, or offering for sale, or advertising any fountain pens of other manufacture than that of the plaintiff under the name of Waterman or Waterman's or Waterman Fountain Pens or Waterman's Fountain Pens or Ideal Pens, or any mark or name in imitation thereof or near resemblance

thereto as might be calculated to deceive or be likely to cause confusion or mistake in the mind of the public or deceive purchasers, or which would indicate that the fountain pens so sold, represented or advertised are fountain pens of plaintiff's manufacture." 3325

Whatever may be thought of the right of some parties to make and sell fountain pens described as these of A. A. Waterman, the admitted facts show an endeavor to sell defendant's goods on complaintant's reputation,—and this branch of the motion is granted.

Next complainant prays for injunction against defendants.

"Infringing the plaintiff's trade-mark 'Waterman's', or infringing the plaintiff's trade-mark 'Waterman's Ideal Fountain Pen, N. Y.,' or infringing the plaintiff's trade-mark 'Ideal' and from manufacturing or selling fountain pens (other than fountain pens of plaintiff's manufacture) having the said trademarks or either of them, or any simulation or colorable imitation thereof, on such fountain pens, whether on the holder or on the gold pen, or on labels, boxes, signs, letter heads, bill heads, circulars, or advertisements accompanying or used in connection with the making or selling of such fountain pens, in any manner whatsoever." 3326

I find no proof of use by defendant of the exact trade-mark "Waterman's." There is clear proof of misuse of the word "Ideal," and injunction may issue accordingly.

Complainant's principal demand is that defendant be restrained from 3327

"Using in connection with the manufacture and sale of fountain pens (other than fountain pens of plaintiff's manufacture) the name 'A. A. Waterman,' or 'A. A. Waterman & Co.,' or 'A. A. Waterman & Company,' or 'Arthur A. Waterman & Company,' or any corporate, firm or individual name containing the words *Waterman, Waterman's* or *Watermans*, or any mark or name containing the word Waterman in any form, whether the same be or be not coupled with the names or initials, or with

3328 the initials 'A. A.,' or with the initial 'A.' or whether the same be or be not used in collocation with the word 'Pen' or 'Fountain Pen' or other descriptive words."

On this point from the undisputed facts, I think that while Arthur A. Waterman may have the right to use some or all of the trade names so objectionable to complainants,—the Modern Pen Company has no such right. Mr. Arthur A. Waterman is not interested in the defendant, nor in the concern for which it is the selling agent.

He does seem to have permitted the use of his name, but even if that name be considered a trade-mark it does not in defendant's hands accompany any business, and it is clear that the name as used by defendant is but the cause of the confusion admitted
3329 and asserted by defendant, a confusion in no way benefitting the man whose name is used.

The injunction *pendente lite*, as above outlined may issue on filing a bond in the sum of $25,000.

August 24, 1910.

C. M. HOUGH,
J.

U. S. Circuit Court, Southern District of N. Y. Filed August 25, 1910, John A. Shields, Clerk.

3330

Original Preliminary Injunction Order. 3331

At a Stated Term of the United States Circuit Court for the Southern District of New York, sitting in Equity, at the Main Post Office Building in the City of New York, Borough of Manhattan, State of New York, on the 29th day of August, 1910.

Present: Hon. Charles M. Hough, United States District Judge.

L. E. Waterman Company,
Plaintiff,

against

Modern Pen Company,
Defendant. 3332

This cause having come on to be heard upon the motion by plaintiff for a preliminary injunction, and on reading and filing the notices of motion for a preliminary injunction herein and admission of service thereof, and the affidavits on behalf of the plaintiff annexed thereto, and on reading and filing affidavits on behalf of the defendant, and Alexander S. Bacon, Esq., counsel for the defendant, and Samuel S. Watson, Esq., counsel for the plaintiff having been heard, and it appearing that this Court has jurisdiction over the parties and the subject-matter, and upon full consideration of the facts presented it appearing that the 3333
plaintiff is a corporation under the laws of the State of New York and is the owner of the trade-mark "Waterman's Ideal Fountain Pen, N. Y.," for fountain pens and of the trade-mark "Ideal" for fountain pens, and that the same have been duly registered by the plaintiff in the United States Patent Office, and that the defendant is a corporation under the laws of the State of West Virginia, and has infringed plaintiff's said trade-marks, and it also appearing that the defendant is guilty of unfair competition in trade with the plaintiff by using the name "Waterman," and "A. A. Waterman & Co." in connection with the

8334 marking, advertising and selling of fountain pens and parts thereof;

NOW, THEREFORE, it is hereby

ORDERED, ADJUDGED AND DECREED that a writ of injunction be issued pursuant to the prayer of the bill of complaint herein, strictly commanding and enjoining the defendant, Modern Pen Company, and its officers, servants, agents, attorneys and workmen, and each and every one of them, under the pains and penalties which may fall upon them, and each of them, in case of disobedience, that they forthwith, and until the further order, judgment or decree of this Court, desist from:

1. Directly or indirectly making or causing to be made, selling or causing to be sold, or offering for sale, or advertising any
8335 fountain pens of other manufacture than that of the plaintiff under the name of Waterman or Waterman's or Waterman Pens, or Waterman's Pens or Waterman Fountain Pens or Waterman's Fountain Pens or Ideal Pens, or any mark or name in imitation thereof or near resemblance thereto as might be calculated to deceive or be likely to cause confusion or mistake in the mind of the public or deceive purchasers, or which would indicate that the fountain pens so sold, represented or advertised are fountain pens of plaintiff's manufacture.

2. Infringing the plaintiff's trade-mark "Waterman's Ideal Fountain Pen, N. Y.," or infringing the plaintiff's trade-mark "Ideal" and from manufacturing or selling fountain pens (other than fountain pens of plaintiff's manufacture) having the said
8336 trade-marks or either of them, or any simulation or colorable imitation thereof, on such fountains pens, whether on the holder or on the gold pen, or on labels, boxes, signs, letter heads, bill heads, circulars, or advertisements accompanying or used in connection with the making or selling of such fountain pens or in any manner whatsoever.

3. Using in connection with the manufacture or sale of fountain pens (other than fountain pens of plaintiff's manufacture) the name "A. A. Waterman," or "A. A. Waterman & Co.," or "A. A. Waterman & Company," or "Arthur A. Waterman &

Company," or any corporate, firm or individual name containing the words *Waterman, Waterman's* or *Watermans,* or any mark or name containing the word Waterman in any form, whether the same be or be not coupled with other names or initials, or with the initials "A. A." or with the initial "A." or whether the same be or be not used in collocation with the word "Pen" or "Fountain Pen" or other descriptive words. 3337

Dated, New York, N. Y., Aug. 27, 1910.

C. M. HOUGH,
United States District Judge.

Copy received Aug. 27/10. Alex. S. Bacon, Deft's Atty. U. S. Circuit Court, Southern District of N. Y. Filed Aug. 29, 1910. John A. Shields, Clerk. 3338

3339

3340 **Decision of Circuit Court of Appeals on Preliminary Injunction (Reported 183 Fed. Rep., 118).**

UNITED STATES CIRCUIT COURT OF APPEALS,
SECOND CIRCUIT.

Before: Noyes, Circuit Judge, and
Hazel and Holt, District Judges.

L. E. WATERMAN COMPANY,
Complainant-Appellee,

3341 vs.

MODERN PEN COMPANY,
Defendant-Appellant.

Appeal from an order of the Circuit Court, Southern District of New York, granting a preliminary injunction in a suit for the infringement of trade-marks and for unfair competition. The injunctive provisions of the order are printed in the foot note.*

The complainant—a New York corporation—has been engaged for many years in the manufacture and sale of fountain pens under the name of the L. E. Waterman Company and has built
3342 up a large business therein. It has also registered the following

* "1. Directly or indirectly making or causing to be made, selling or causing to be sold, or offering for sale, or advertising any fountain pens of other manufacture than that of the plaintiff under the name of Waterman or Waterman's or Waterman Pens, or Waterman's Pens or Waterman Fountain Pens or Waterman's Fountain Pens or Ideal Pens, or any mark or name in imitation thereof or near resemblance thereto as might be calculated to deceive or be likely to cause confusion or mistake in the mind of the public or deceive purchasers, or which would indicate that the fountain pens so sold, represented or advertised are fountain pens of plaintiff's manufacture.

trade-marks as applied to such pens: "Ideal;" "Waterman's Ideal Fountain Pen, N. Y.," and "Waterman's." 3343

The defendant—a West Virginia corporation—is selling agent of a firm called A. A. Waterman & Company which manufacture fountain pens and marks them with such name.

Arthur A. Waterman had been employed by the complainant but in 1898 he formed a partnership for the manufacture of fountain pens under the name of the A. A. Waterman Pen Company. The present complainant brought suit against said firm for the infringement of trade-mark and unfair competition in the Supreme Court of the State of New York and a decree was rendered in September, 1898, enjoining the defendant from using a corporate name containing the word "Waterman" but providing as follows: 3344

"But the defendants are not prohibited from indicating that fountain pens made by them are made or prepared or sold for

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"2. Infringing the plaintiff's trade-mark 'Waterman's Ideal Fountain Pen, N. Y.,' or infringing the plaintiff's trade-mark 'Ideal' and from manufacturing or selling fountain pens (other than fountain pens of plaintiff's manufacture) having the said trade-marks or either of them, or any simulation or colorable imitation thereof, on such fountain pens, whether on the holder or on the gold pen, or on labels, boxes, signs, letter heads, bill heads, circulars, or advertisements accompanying or used in connection with the making or selling of such fountain pens, or in any manner whatsoever. 3345

"3. Using in connection with the manufacture or sale of fountain pens (other than fountain pens of plaintiff's manufacture) the name 'A. A. Waterman,' or 'A. A. Waterman & Co.' or 'A. A. Waterman & Company,' or 'Arthur A. Waterman & Company,' or any corporate, firm or individual name containing the words Waterman, Waterman's or Watermans, or any mark or name containing the word Waterman in any form, whether the same be or be not coupled with other names or initials or with the initials 'A. A.' or with the initial 'A.' or whether the same be or be not used in collocation with the word 'Pen' or 'Fountain Pen' or other descriptive words."

3346 or by Arthur A. Waterman & Company or A. A. Waterman & Company."

Subsequent to this decision the name A. A. Waterman & Company was used by successive partnerships of which said Waterman was a member. The business was not successful and in 1905 a reorganization took place and an agreement was entered into whereby in effect said Waterman assignd to Isaac E. and William L. Chapman, who had been previously interested with him in the business, the right to use in connection therewith the name "A. A. Waterman & Co."

The defendant was shown to have sold a limited number of fountain pens marked "Royal Ideal Pen." The evidence also tended to show some use of the word "Waterman" in connec-
3347 tion with the sale of the goods of the firm of A. A. Waterman & Company without the distinguishing initials.

NOYES, Circuit Judge (after making the foregoing statement): The complainant's trade-mark "Ideal" is conceded to be valid. The defendant infringed it by the sale of the pens marked "Royal Ideal Pen." Consequently the second paragraph of the injunction order was proper.

Assuming that the present co-partnership of A. A. Waterman & Company has the right under the agreement with Arthur A. Waterman to use that firm name, they have no right to use the name "Waterman" without the initials. The use of the name which they may have the right to employ concededly causes confusion and they have no right to increase that confusion by em-
3348 ploying any name less definite.

The defendant disclaims the use of the name "Waterman" alone. If so an injunction against such use will do it no harm. But, as already stated, we think there was sufficient evidence of such use to warrant the first paragraph of the injunction.

The third paragraph of the injunction order is, in our opinion, erroneous. It is clear that the partnerships of which Arthur A. Waterman was a member, had the right to use the name A. A. Waterman & Co., in connection with their business and to so mark their pens. The decision of the Supreme Court of the

State of New York in which all parties acquiesced for many years, was in accordance with principles now well established by decisions of the Supreme Court of the United States. 3349

Similarly, said Waterman had the right to transfer to his former partners in connection with the reorganization and sale of the business, the right to continue the use of his name. It is true that it became their duty, as it had been the duty of the previous co-partnerships, to do no act to increase the confusion necessarily arising from the use of a name similar to that of the complainant. But we find nothing in the record showing any such acts except those which we have seen to be covered by the first two paragraphs of the injunction.

There is insufficient basis presented for the contention that the agreement granting the right to use the name "A. A. Waterman & Co." to the present firm was a mere sham and fraudulent device, not connected with the reorganization and sale of the business. 3350

The order of the Circuit Court is modified by striking out the last paragraph thereof (paragraph 3) together with the finding that the defendant has been guilty of unfair competition by using the name "A. A. Waterman & Co.," and as so modified is affirmed. The costs of this Court may be divided between the parties.

3351

3352 **Modified Preliminary Injunction Order.**

At a Stated Term of the United States Circuit Court for the Southern District of New York, sitting in Equity, at the United States Court and Post Office Building, in the Borough of Manhattan, City of New York, on the 10th day of December, 1910.

Present: Hon. Charles M. Hough, United States District Judge.

L. E. WATERMAN COMPANY,
Plaintiff,
against
3353
MODERN PEN COMPANY,
Defendant.

This cause having come on to be heard for a second time upon the motion by the plaintiff for a preliminary injunction, and on reading and filing the mandate of the United States Circuit Court of Appeals for the Second Circuit in this cause, bearing date the first day of December, A. D., 1910, in obedience to said mandate and in cognizance with the opinion of said United States Circuit Court of Appeals herein, in which said mandate it is

"ORDERED, ADJUDGED AND DECREED that the order of said Circuit Court be and it hereby is modified by striking out the
3354 last paragraph thereof (paragraph 3) together with the finding that the defendant has been guilty of unfair competition by using the name 'A. A. Waterman & Company,' and as so modified is affirmed, with costs in favor of the appellant taxed at the sum of $441.86,"

it is hereby

ADJUDGED, ORDERED AND DECREED that the order herein, entered in the office of the Clerk of this Court on the 29th day of August, 1910, be and the same hereby is modified by striking therefrom the words "and it also appearing that the defendant is guilty of unfair competition in trade with the plaintiff by using

the name 'A. A. Waterman & Co.' in connection with the marking, advertising and selling of fountain pens and parts thereof" and by striking out the "3" paragraph of said preliminary injunction reading as follows: 3355

"3. Using in connection with the manufacture or sale of fountain pens (other than fountain pens of plaintiff's manufacture) the name 'A. A. Waterman,' or 'A. A. Waterman & Co.,' or 'A. A. Waterman & Company,' or 'Arthur A. Waterman & Company,' or any corporate, firm or individual name containing the words *Waterman, Waterman's* or *Watermans,* or any mark or name containing the word Waterman in any form, whether the same be or be not coupled with other names or initials, or with the initials 'A. A.' or with the initial 'A.' or whether the same be or be not used in collocation with the word 'Pen' or 'Fountain Pen' or other descriptive words." 3356

And it is further

ORDERED, ADJUDGED AND DECREED that the said order of August 29, 1910, be and the same hereby is modified so as to read as follows:

3357

8358 At a Stated Term of the United States Circuit Court for the Southern District of New York, sitting in Equity, at the Main Post Office Building in the City of New York, Borough of Manhattan, State of New York, on the 29th day of August, 1910.

Present: Hon. Charles M. Hough, United States District Judge.

L. E. WATERMAN COMPANY,
Plaintiff,
against
MODERN PEN COMPANY,
Defendant.

8359

This cause having come on to be heard upon the motion by plaintiff for a preliminary injunction, and on reading and filing the notices of motion for a preliminary injunction herein and admission of service thereof, and the affidavits on behalf of the plaintiff annexed thereto, and on reading and filing affidavits on behalf of the defendant, and Alexander S. Bacon, Esq., counsel for the defendant, and Samuel S. Watson, Esq., counsel for the plaintiff, having been heard, and it appearing that this court has jurisdiction over the parties and the subject matter, and upon full consideration of the facts presented it appearing that the plaintiff is a corporation under the laws of the State of New
3360 York, and is the owner of the trade-mark "Waterman's Ideal Fountain Pen, N. Y.," for fountain pens and of the trade-mark "Ideal" for fountain pens and that the same have been duly registered by the plaintiff in the United States Patent Office, and that the defendant is a corporation under the laws of the State of West Virginia, and has infringed plaintiff's said trade-marks, and it also appearing that the defendant is guilty of unfair competition in trade with the plaintiff by using the name "Waterman" in connection with the marking, advertising and selling of fountain pens and parts thereof;

Now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that a writ of injunction be 3361
issued pursuant to the prayer of the bill of complaint herein, strictly commanding and enjoining the defendant, Modern Pen Company, and its officers, servants, agents, attorneys and workmen, and each and every one of them, under the pains and penalties which may fall upon them, and each of them, in case of disobedience, that they forthwith, and until the further order, judgment or decree of this Court desist from:

1. Directly or indirectly making or causing to be made, selling or causing to be sold, or offering for sale, or advertising any fountain pens of other manufacture than that of the plaintiff under the name of Waterman or Waterman's or Waterman Pens, or Waterman's Pens or Waterman Fountain Pens or Waterman's Fountain Pens or Ideal Pens, or any mark or name 3362
in imitation thereof or near resemblance thereto as might be calculated to deceive or be likely to cause confusion or mistake in the mind of the public or deceive purchasers, or which would indicate that the fountain pens so sold, represented or advertised are fountain pens of plaintiff's manufacture.

2. Infringing the plaintiff's trade-mark "Waterman's Ideal Fountain Pen, N. Y.," or infringing the plaintiff's trade-mark "Ideal" and from manufacturing or selling fountain pens (other than fountain pens of plaintiff's manufacture) having the said trade-marks or either of them, or any simulation or colorable imitation thereof, on such fountain pens, whether on the holder or on the gold pen, or on labels, boxes, signs, letter heads, bill heads, circulars, or advertisements accompanying or used in con- 3363
nection with the making or selling of such fountain pens, or in any manner whatsoever.

Dated, New York, N. Y., Aug. 27, 1910.

C. M. HOUGH,
United States District Judge.

3364 UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. E. WATERMAN COMPANY,
Plaintiff,
against
MODERN PEN COMPANY,
Defendant.

Alexander S. Bacon, Esq.,
Attorney for Defendant.

3365 Dear Sir:

Referring to your communication to us, dated May 17, 1911, we beg to remind you that at the time you made the offer which was spread on the record of this action and marked "Defendant's Exhibit A of December 12, 1910," that at that time we offered to limit the proofs to the subject-matter covered by paragraph marked "3" of the preliminary injunction order signed by Judge Hough, provided that the defendant would consent that at the final hearing an injunction order should be made which would include the prohibitions contained in the paragraphs marked "1" and "2" of the present temporary injunction order. In other words, we offered to consider as settled, the subject-
3366 matter of the present temporary injunction order and limit the proof to the subject-matter of paragraph "3" of the preliminary injunction order entered by Judge Hough. This would have materially curtailed the testimony and greatly reduced the expense. You declined our proposal and consequently we were compelled to take proofs regarding the subject-matter of the present preliminary injunction order as well as all other allegations of the complaint.

In view of the foregoing, and also for other reasons not necessary now to state, your claims, that defendant's expenses and disbursements be taxed against plaintiff, are without merit.

We now offer on behalf of the plaintiff, to consent that a final order and decree shall be entered in this action in favor of plaintiff and against the defendant, its officers, agents, etc., which shall contain the prohibitions and subject-matter of the preliminary injunction order entered herein by Judge Hough on August 29, 1910, that each party pay its own costs, and that defendant pay plaintiff the sum of Seventy-five dollars ($75.00) as damages on account of its use of the word "Ideal" on fountain pens manufactured for John Saadi of Washington. 3367

We make this offer, on behalf of the plaintiff, without prejudice and without recognizing or admitting any of the defendant's claims, or the statements of your communication of May 17, 1911, but make the offer solely as a compromise settlement and to avoid further labor and expense in connection with this action. 3368

Dated, New York, N. Y., May 19, 1911.

Yours, etc.,

WATSON & RAYMOND,

Attorneys for Plaintiff.

Endorsement: Copy Received May 19, 1901. Alex. S. Bacon, Deft.'s Atty.

3369

3370 *Theodore A. Steinmuller*

U. S. CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK,

In Equity.

L. E. WATERMAN COMPANY,
Plaintiff,

vs.

MODERN PEN COMPANY,
Defendant.

3371

Testimony taken *de bene esse* for the final hearing on part of the complainant under Sections 863 and 864 of the Revised Statutes of the United States in pursuance of the rules and practice of said Court, before Arthur L. Spamer, Esq., Clerk of the United States District Court, for the District of Maryland, at his office in the Main Postoffice Building, in the City of Baltimore, State of Maryland, on the 4th day of April, 1911, at 9:30 o'clock in the forenoon, pursuant to notice hereto annexed.

Appearances:

Samuel S. Watson, Esq., for plaintiff, and

3372 Morton Stein, Esq., for the defendant.

THEODORE A. STEINMULLER, of full age, who resides in Baltimore, a witness produced on behalf of the plaintiff, being duly cautioned and sworn, testified as follows:

By Mr. Watson:

Q1. Please state your name, place of residence and your occupation? A. Theodore A. Steinmuller; 1821 W. Fayette St., Baltimore, Md.; merchant.

Q2. In what line of business are you engaged? A. Stationery and printing.

Q3. With what concern are you connected? A. Lucas Bros., incorporated.

Q4. Where is their place of business? A. 221 and 223 E. Baltimore St., Baltimore, Md.

Q5. How long have you personally been in the stationery business? A. Twenty-five years.

Q6. All that time in Baltimore? A. Yes, sir.

Q7. In connection with your business as a stationer, have you dealt in and handled fountain pens? A. We have.

Q8. For how long personally? A. Twenty-five years.

Q9. What kind of fountain pens, during this period, have you handled and sold? A. We have sold various makes, including the A. A. Waterman and L. E. Waterman, and almost any pen that was offered at the time. 3374

Q10. Have you ever sold a Sterling Fountain pen? A. Yes, sir.

Q11. A Wirt? A. Yes, sir.

Q12. A Swan? A. I don't recall that.

Q13. A Conklin? A. Yes, we have sold a few of those.

Q14. How long have you handled and sold the Waterman Ideal Fountain pens? A. Twenty-five years.

Q15. By what names are these pens usually called for by your customers? A. Usually they call for the Waterman pen.

Q16. How long has that been the fact? A. To my recollection it has always been the fact.

Q17. Are these pens well known among the public? A. They are. 3375

Q18. What is the name by which the Waterman Ideal Fountain Pens are usually referred to by the trade so far as it has come to your attention? A. We usually know them as the L. E.; sometimes as the Ideal, but more frequently as the L. E. Waterman pen.

Q19. How long has that been the fact? A. That has been the fact all the time I have sold them; twenty-five years.

Q20. Are they known in the trade as Waterman pens?

Objected to as leading.

3376 *Theodore A. Steinmuller*

A. They are.

Q21. How long has that been the fact? A. Always, since I have sold them.

Q22. These pens were on the market many years before pens stamped "A. A. Waterman" were on the market; were they not? A. Yes, sir; quite a number of years.

Q23. Were they well known on the market prior to any pens stamped A. A. Waterman Co. coming to your attention? A. They were.

Q24. What was the name by which they were known at that time? A. Waterman.

3377 Q25. Just the same as now? A. Just the same as now.

Q26. From your experience in handling and selling fountain pens for twenty-five years, what do you consider the best fountain pen on the market?

Objected to as incompetent, immaterial and irrelevant.

A. The Waterman, the L. E. Waterman pen, we have always considered the best.

Q27. As far as the matter has come to your attention, what is the opinion of the trade as to what is the best pen on the market?

Objected to on the same grounds.

A. The L. E. Waterman or Waterman pen.

3378 Q28. When you speak of the Waterman pen do you refer to the Waterman Ideal Fountain pen? A. I do.

CROSS-EXAMINATION by Mr. Stein:

XQ1. Do you still buy and sell A. A. Waterman Company's fountain pen? A. No, sir.

XQ2. When did you discontinue the handling of that line? A. I should say approximately ten years ago.

XQ3. Are you familiar at all personally with the A. A. Waterman Company pen manufactured since July 1st, 1905? A. No, sir.

XQ4. You have not handled them? A. No, sir.

XQ5. You don't know anything about their manufacture? A. No, sir.

XQ6. Or in what way they differ from the pens manufactured by A. A. Waterman Co., ten or fifteen years ago? A. I do not.

XQ7. So when you speak today of considering the L. E. Waterman Company's pen the best in the market, I refer to the Waterman Ideal Fountain Pen, you speak without any knowledge as to the A. A. Waterman Company Fountain Pen manufactured during the last five years? A. Yes, sir, I have not any knowledge of the A. A. Waterman Pen in recent years.

XQ8. So you cannot say, personally, and will be unable to say, 3380
personally, whether the L. E. Waterman pen is a better pen than the A. A. Waterman pen until you have had an opportunity to examine and experiment with the A. A. Waterman pen? A. The only experience we have had is the same in recent years as in past years which caused us to discontinue the sale of that pen; that is, that some of the people who purchased this other Waterman pen under various initials, I have known them to bring them back and complain.

XQ9. Do any purchasers of the Ideal pen bring them back and complain? A. Yes, sir.

XQ10. As a matter of fact, a number of the purchasers of each kind of fountain pen manufactured, bring them back and complain, do they not? A. Yes, sir.

XQ11. Of the point being too hard or too soft, or something 3381
getting out of order with the pen? A. Yes, sir.

XQ12. You have testified that the trade refers to the Ideal pen, manufactured by the L. E. Waterman Co., as the L. E. Waterman pen? A. Yes, sir.

XQ13. That is correct, is it not? A. Yes, sir.

XQ14. And sometimes refers to that kind of pen as the Ideal fountain pen? A. Yes, sir.

XQ15. How does the trade refer to the A. A. Waterman Company's pen? A. I don't know just what the trade does do.

XQ16. How did you refer to them when dealing in them and showing them to customers in times past? A. I have not had

3382 *Theodore A. Steinmuller*

any talk or any experience with any of my competitors, or the trade, in respect to the A. A. Waterman pen.

XQ17. How did you describe the A. A. Company pen to possible customers, when you were exhibiting those pens to those customers? A. We described them as a pen that was a cheaper grade of pen.

XQ18. By what name? A. By the name of the A. Waterman, the same name it went under, I don't recall exactly; I know one was the A. A. Waterman, I believe, or A. Waterman.

XQ19. When were the A. A. Waterman pens first put on the market? A. I could not tell you that, but it was several years after we started to sell the L. E. Waterman pens that we started
3383 to put in a stock of the other Waterman pens.

XQ20. I think you said a moment or two ago, that you never discussed the A. A. Waterman Co. pen very freely with the trade generally; is that correct? A. Yes, sir.

XQ21. Have you discussed the merits or demerits of that particular pen? A. No, sir.

XQ22. Or compared that particular pen with the L. E. Waterman, Swan, Conklin, Sterling, Wirt or any other pen mentioned by Mr. Watson? A. No; not at the time that we were selling them.

XQ23. When did you last generally discuss with the trade the comparative qualities of these pens? A. With the manufacturing trade?

3384 Mr. Stein: No; with the selling trade? A. Off and on we spoke of it as the L. E. Waterman method of doing business as well as the superiority of his pen; we spoke of some of the other makes of pens mentioned, including, I think, this other Waterman pen and we have always practically agreed that the L. E. Waterman pen method of doing business and also the pen was superior to any other and gave us less trouble.

XQ24. As a matter of fact you liked the way the L. E. Waterman Company did business with you? A. We certainly did.

XQ25. They took back any pens that you cannot sell and give you full credit? A. Yes, sir.

XQ26. You have that agreement with them? A. Yes, sir.

3385

XQ27. And if you go out of business they take the stock off your hands at cost? A. Yes, sir.

XQ28. They will stand back of all their pens and make good, no matter why they have to make good? A. Yes, sir.

XQ29. That is what you like about their way of doing business? A. We like that about their way of doing business.

XQ30. Do you consider the self-filling qualities of the A. A. Waterman pen any advantage or disadvantage over the old style of the L. E. Waterman pen? A. I don't know anything about the A. A. Waterman self-filling pen; I never saw one of them.

XQ32. Have you ever seen any of their pens manufactured since July 1st, 1905? A. Not unless some of those which were brought back to the store to be repaired were those; I am unable to say.

3386

XQ33. But you have never seen a self-filling A. A. Waterman pen? A. I have never seen one; no, sir.

XQ34. You have based your expert opinion as to the comparative qualities of the two pens without any knowledge or any view or any inspection of the A. A. Waterman pen manufactured since July 1st, 1905? A. I have no knowledge or experience with any pens of the A. A. Waterman Company, since 1905.

RE-DIRECT EXAMINATION by Mr. Watson:

3387

RDQ1. I think you testified on your direct-examination—if I am not correct, please say so—that the trade usually, or commonly, I think was your expression, referred to the Waterman Ideal fountain pen as the Waterman pen; am I correct in that? A. Yes, sir.

RDQ2. I think that you said they sometimes called it the "Ideal;" is that right? A. Occasionally.

RDQ3. And sometimes they referred to it as the L. E. Waterman pen; is that correct? A. Occasionally; yes, sir.

RDQ4. And those are the facts? A. Yes, sir.

RDQ5. Has the Waterman Ideal fountain pen, so far as the matter has come to your personal knowledge, proved satisfactory to your customers?

Objected to as incompetent, immaterial and irrelevant.

3388 *Theodore A. Steinmuller*

RE-CROSS EXAMINATION by Mr. Stein:

RXQ1. Do you not recall, that upon your direct-examination, in answer to Mr. Watson's question, which in substance was: By what name does the public refer to the pens of L. E. Waterman Company and the trade, and you answered that L. E. Waterman pens and sometimes the Ideal; that is right, is it not? A. If I said that, I should have said it is generally referred to as the Waterman pen.

RXQ2. Is it not a fact that it was only after you made that answer, or a similar answer and Mr. Watson then asked, do they not refer to them as Waterman pens, that you first answered yes?

3389 A. The real facts are that people asked for the Waterman pen and mean to get the L. E. Waterman pen or the Ideal pen; those are the real facts.

RXQ3. Do they ever ask for the Ideal? A. Sometimes.

RXQ4. When they ask you for the Waterman pen, what do you tell them, that there are two kinds of Waterman pens? A. No, sir.

RXQ5. Or simply go ahead and show them the L. E. Waterman pen? A. We show them the L. E. Waterman pen; we haven't any other kind to show them.

RXQ6. Do you tell them there is another kind of pen known as the A. A. Waterman pen? A. No, sir.

RXQ7. That claim certain unusual and distinctive advan-

3390 tages?

Mr. Watson: I object to that statement on the record. If counsel desires to testify to the merits of the pen I would like him to be put under oath.

A. No, sir.

RXQ8. You simply go ahead on the assumption they want the Ideal pen or the L. E. Waterman pen, and sell them such a pen? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Watson:

RDQ6. Have you ever known any person to come into your store during your business career and ask for a Waterman pen and expecting or giving you in any manner to understand, that they expected to receive a pen stamped "A. A. Waterman Co."? A. I never did.

RDQ7. What was the reason you gave up the sale of the A. A. Waterman Company's fountain pen?

Objected to as incompetent, immaterial and irrelevant and no proper foundation shown and the record also discloses the fact that such giving up was ten years ago and consequently the time is too remote. 3392

A. Because they were unsatisfactory.

RDQ8. Did you find there was any confusion between pens stamped "A. A. Waterman & Co." and those marked "Waterman Ideal Fountain Pens"?

Objected to as incompetent, immaterial and irrelevant.

A. At that time there was considerable confusion.

RDQ9. What was the cause of that confusion, the particular cause of that confusion, so far as you observed? A. The confusion was particularly caused by competitors putting out the pen marked "A. A. Waterman" at a reduced price and people come into your establishment and when you charged them the 3393 price for the L. E. Waterman pen, complained of the excess in the price and wanted to know why your competitor could sell it for so much less and we were in consequence compelled at that time to put in a line of the cheaper grade of Waterman pens to show the customers the difference.

RDQ10. When you were selling pens stamped "A. A. Waterman & Co." were people complaining to you that they had purchased these pens when they had expected to purchase the Waterman Ideal Fountain pen?

Objected to as incompetent, irrelevant and immaterial, hearsay, as leading and as calling for a conclusion; and

3394 *Theodore A. Steinmuller*

counsel states upon the record that he again calls attention to complainant's counsel to the fact that complainant's counsel's questions to the various witnesses are altogether too leading and direct the attention of the witness to the answer that the counsel apparently wishes to have.

A. Sometimes people came in and were much surprised to find that they had a pen that was not a Waterman pen, which they had expected to get; and we had to explain to them that there were other Waterman pens and they invariably felt sore at the idea of having purchased a pen other than what they expected to buy.

3395 *RE-CROSS EXAMINATION by Mr. Stein:*

RXQ9. Do you know any one who uses the A. A. Waterman pens and who has used them steadily for some years? A. No, sir.

RXQ10. You don't know of anybody? A. No, sir.

RXQ11. In the entire city of Baltimore, who has been using the A. A. Waterman pen steadily for some years?

Objected to on the ground of attempt to confuse witness.

A. No, sir.

RXQ12. Do you know anybody in Baltimore who is using the
3396 A. A. Waterman pens? A. I do not.

RXQ13. Have you met any such person in the last five years? A. I have not.

RXQ14. And you have not discussed the quality of the A. A. Waterman pen with such a person? A. No, sir; not with such a person.

RXQ15. As a matter of fact, do not people who use, or want to use, the A. A. Waterman pen, describe their pens as the Waterman pen; do not consumers so describe them? A. We have not handled any of the other makes of Waterman pen in the past few years, and consequently I am unable to answer that question.

RXQ16. Have you not met or seen or talked with people who used the A. A. Waterman pen, consumers who have used it? A. I have not.

RXQ17. And without any discussion with anybody who has used that pen and does use it as a consumer, and without having seen that pen, you are still willing to testify as an expert that the L. E. Waterman pen today is superior as a pen to the A. A. Waterman pen? A. I am.

RXQ18. You testified that the A. A. Waterman pen was sold cheaper than the L. E. Waterman pen? A. Yes, sir.

RXQ19. And you were compelled to put in a cheaper line or lines at reduced prices, in order to meet competition? A. Yes, sir. 3398

RXQ20. Whose line at reduced prices did you put in to meet that competition? A. We put in various makes and I think amongst them was the A. A. Waterman pen, or the A. Waterman pen; I don't recall just exactly the name it was sold under at that time.

RXQ21. Did you put in a line, at a reduced price, manufactured and sold by L. E. Waterman Co.? A. We did.

RXQ22. The confusion then, I understand, was due to the fact that the competition required you to put in a cheaper line of pens including a cheaper line manufactured by L. E. Waterman Co.? A. Yes, sir.

RXQ23. On those cheaper lines your profits were not as large as on the higher priced lines? A. They were not. 3399

Examination concluded and signing of signature waived.